UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION, ET AL.

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 22, 2008

10:14 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

HEARING re Motion of Bank of America for Entry of Order Temporarily Allowing Claims for Voting on Plan Pursuant to Fed. R. Bankr. P. 3018(a)

HEARING re Motion of Technology Properties Ltd. for Entry of Order Temporarily Allowing Claims for Voting on Plan Pursuant to Fed. R. Bankr. P. 3018(a)

HEARING re Motion for Order Estimating Claims for Purposes of Voting on Plan of Reorganization

HEARING re Motion of SPCP Group, LLC Pursuant to Bankruptcy Rule 3018(a) Requesting Temporarily Allowance of Claims for Purposes of Voting to Accept or Reject the Plan

HEARING re First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-in-Possession

HEARING re Motion for Order Approving Multidistrict Litigation and Insurance Settlements

HEARING re Motion for Order Pursuant to 11 U.S.C. Section 105(a) and 502(c) Estimating or Provisionally Allowing Certain Unreconciled Claims Solely for Purposes of Administration of Discount Rights Offering

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P R O C E E D I N G S

THE COURT: Be seated. Okay. Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler, Kayalyn Marafioti and Al Hogan on behalf of the debtors for the third day of the debtors' confirmation hearing. With Your Honor's permission we'd proceed with closing arguments.

THE COURT: Yes.

MR. BUTLER: Your Honor, after 836 days before this Court attending to the reorganization of the largest industrial Chapter 11 case in U.S. history, I stand before you now, on behalf of the forty-two debtors and debtors-in-possession, seeking confirmation of the first amended plan of reorganization, pursuant to Section 1129 of the Bankruptcy Code.

While the first part of my argument will focus on the remaining objections to confirmation, and putting aside the ERISA and lead plaintiff's objections, which I think will be resolved in connection with MDL, all of the remaining objections relate to Section 7.8 of the plan. At the conclusion of that argument, with Your Honor's permission, I'd like to spend a few minutes at the end of the argument, discussing the Chapter 11 cases, the plan and the debtors' confirmation case taken as a whole.

THE COURT: Okay.

MR. BUTLER: At the moment, Your Honor, we're going

to focus on Section 7.8. And if you look at Exhibit 1 in the index at (vi), there is a reason that Section 7.8 in the debtors' plan was included under the means for implementation of the plan. It was a carefully negotiated provision. Negotiated with the parties in interest in this case, dealing with issues of importance to the plan investors, the statutory committees and others relating -- and to the debtors, of course, relating to how to implement an executive management program that would support the debtors' reorganization and successful execution of its plan. And that is set forth in Section 7.8 of the plan on page 37 of the plan. And this is the provision that we are focused on.

We have three objectors who have objections to this provision. They are the UAW, who has filed objections at Dockets number 11475, 11580, 11938 and 12143. The IUE at Docket number 11582 and Docket number 12026. And an individual by the name of Randy Halazon, H-A-L-A-Z-O-N, who's filed the same, a January 4th letter, a two-page letter, that was docketed at 11822 and also, again, at 12016 but it's the same letter objection.

And while Mr. Halazon objects to a number of issues, at the very end of the letter he says in there, in his closing, and I quote from the second to last paragraph, "No one in their right mind could possibly think that the 500 million bankrupt bonuses to be paid, with far more in the future to come, is in

any way fair and equitable treatment." And as I reflected over the weekend about this morning's argument and reread the objections and reread Mr. Halazon's objection, I was struck about the importance in this argument of avoiding hyperbole and talking about the facts and the realities of the debtors' case. The reality is that, in addition to the executive program -- executive compensation program design was approved by the compensation committee and has been approved by others, which we'll talk about in a few minutes.

The programs -- the emergence -- so-called emergence programs that are before the Court really involve two things. They involve emergence cash programs which are, in the aggregate, eighty-seven million dollars which representatives will talk about in a few minutes. A sixty-seven percent discount to the original LTI in which they're based. And there to be paid half in cash in 2008 and half in cash in 2009. And then there are forward looking long-term incentive opportunities to be dealt with to cover the first eighteen months post-emergence that are half performance based and half time vested, again in a reduced amount of eighty-seven million dollars. And the criteria for the administration of those -- of all of those -- that LTI opportunity will be determined by the successor board of directors. That is the board that the creditors elect under the selection process set forth in the plan. So, rather than there being a 500 million dollar set of

bonuses being paid, the reality is much different.

The debtors' burden, Your Honor, today as plan proponent is to demonstrate compliance with Section 1120 by a preponderance of the evidence. It is important to reflect on the fact that no objector has presented a single expert, a single fact witness or a single rebuttal witness in opposition to the debtors' evidentiary case.

While the UAW and the IUE designated various discovery exhibits produced to them by the debtors and its advisors, as I think the record makes clear this information does not controvert the debtors prima facie case for confirmation nor do they swing the needle close, let alone below, the threshold required for the debtors to carry the evidentiary burden for confirmation of the plan taken as a whole.

I do want, at the outset, to reflect for a moment, Your Honor, on the e-mails that were presented on cross-examination that will undoubtedly be repeated during oral argument here today. There's no doubt in my mind that Friday afternoon's examination, at least for a moment and for a period of an hour or more, shifted focus from the uncontroverted testimony as to the merits of the program to a useful reminder of the scrutiny that every blackberry communication is subjected to in this electronic age.

But even though the public post mortem review of such

communications can be distasteful and even inflammatory, it does not follow and the evidence in this case does not support the view that the final product is flawed or unreliable, especially in the absence of contrary evidence, especially here where not expert fact or rebuttal evidence was introduced by the objectors.

It is also, I think, instructive, at least to me -- instructive to note that when the e-mail communications were displayed that involved a director, those communications illustrated thoughtful challenges and probing questions which, in our view, underscores the propriety of the process and underscores the amount of time and effort that the directors went through -- the independent directors went through in working on and developing this program.

Just a word, Your Honor, about the AIP. For reasons that are somewhat inexplicable to me, we spent a lot of time on Friday on the IAP, which had been approved previously by Your Honor on four separate orders and which is -- will -- in terms of the post-emergence AIP, so long as the debtors emerge by the end of March, we won't be back here for a fifth AIP. That'll be determined by the post-emergence board of directors.

Back -- we look at Exhibit 150, page 39. Back in August of this year, the debtors made a presentation to the joint statutory committees, a committee in which both the UAW and IUE serve; one as a voting member and one as a non-voting

member. And we spent time with them looking at the first three months -- first three payouts in this case. And this was the chart that was presented to them, slightly different than the chart that they presented from the debtors' records, one of the internal charts. And this chart shows, from August 9, 2007, a reflection of the fact that there had been over a billion dollars worth of value created in terms of additional EBITDA over those three periods. And there was a total of twenty-six or twenty-seven million dollars paid in additional payouts to the debtors' executive management team, the 506 odd members of management who contributed to that result.

And I think it is important, again, however inconvenient a truth it is that executive management deserves to be paid. I think it's important to reflect on contributions. And I think it is absolutely self-evident in the record, as it was in the prior AIP hearings that these payments, these incentive payments, were earned and there was significant value that benefited the estate by these contributions.

I also -- if you look briefly, and I don't have the exact chart on this but I think Your Honor can access the reports made regarding second-half performance at Exhibit 153. Back just in November there was a comparison, this is page 23 of the joint statutory committee book, and there was a comparison for the first half of the last part of 2007, how the

different divisions were performing against plan. And you can see that three of them were below plan, a couple are very close to plan and there's just two that were exceeding plan. And if you look in the next pages in Exhibit 154, pages 18 and 20, you see the results reported to the statutory committees in January of this year dealing with performance and the performance in October and November was not as good as the year before in October and again in November. If you look at November, marginally -- just marginally different than the November performance. And the fact is, at the end of the day, the second half of 2007 performance, before the creditors committee exercises their 200 million dollars worth of adjustment authority they have, is likely to be well below 120 percent. And I would be very surprised if at the end of the day that there are payments under the second half program much above the 110 percent level. And so, when you sort this out the record just -- the record just doesn't support the fact that the -- under the AIP that people have been getting unreasonable payments. Your Honor has entered an order saying that they are reasonable. And I do -- I think that's just an important point to note as we move forward.

I also think it's important in connection with looking forward. The testimony that was in the record that AIP, going forward, is just as -- is, during the Chapter 11 case, is based on separate targets. The testimony was not

based on base salary. Adjustments in base salary do not impact targets for AIP. And there is not the kind of geometric progression that was tried to be illustrated on cross-examination.

I think it's also important to note, from the seven -- the record in Section 7.8 and its attachments that the new Delphi board will set the emergence targets I indicated for 2008, assuming we've emerged by the end of March. And it'll be the creditors' selected board that'll make those determinations.

Turning, Your Honor, now to the process the compensation committee used. Back in the very first day of this case the company filed, and it's at Exhibit 265, a motion that -- with a business case setting forth its original KECP, its Key Executive Compensation Program, which had various elements on it. And I would point out, unlike what was indicated in the record or at least by argument from counsel, the AIP was approved in four separate orders. The severance portion of that was approved in first day orders. But the emergence programs were deferred and incorporated into the plan process. And we should take just a minute and talk about why that is -- why that was. And that was -- that issue was reviewed -- was discussed numerous times during the course of the two and a half years. And ultimately, on this record, we are at this -- we were at a hearing before Your Honor we talked

about the fact that the company, after consultation with other stakeholders here had decided that it was best, we thought, in the company's interest to evaluate the emergence programs in the context of a plan and as part of a plan. Where creditors can vote, where there is the disclosure associated with a plan, where the -- the process can be evaluated, ultimately, under 1129 rather than under other sections of the Bankruptcy Code. Where the relief granted occurs only on the effective date and is not a use of property during the course of the Chapter 11 case but rather something that occurs on the effective date of the plan when all of the parties receive the benefit of the bargain under the plan of reorganization.

And so we -- that was the way in which we structured this and that's what we're before Your Honor on, an integrated provision of the confirmation -- of the plan of reorganization and it's part of our confirmation case.

It is important to know, though, even in the early KECP that was filed, and I turn -- point out now pages 7 and 8 of Exhibit 3 which is part of Exhibit 265, to point out the fact that even in connection with that program there were give-ups and cancellations. And that is -- and there's two important ones to point out. There was, and Your Honor will recall from the testimony on Friday, there was a twenty-one million dollar retention program that was adopted -- cash-pay program that was adopted in 2005 as part of the various

delivery vehicles for the LTI in that year, that was in place of the options. You heard the testimony from Mr. Bubnovich, and, I believe, from Mr. Naylor who basically indicated that was done because of the -- the unreliability, at that point in time of options and in order to retain people there were cash payments put in place. The facts are, and the record indicates, that program was cancelled as the company entered Chapter 11 and fourteen million of the vested amounts of money, of the twenty-one million dollars, was never paid to the executives.

In addition, Your Honor asked questions and heard answers about the LTI in 2003, 2004 and 2005 and understands from the record that a third of that -- those LTI opportunities were cash. And the cash were part of the performance achievement plan and the facts are that the 2003 LTI grants were honored but as part of the first day motion the debtors cancelled the 2004 grants and the 2005 grants. And those PAPs and the cash associated with those were never made available to the executives.

THE COURT: Had they been vested?

MR. BUTLER: Excuse me?

THE COURT: Were those vested?

MR. BUTLER: Yes, they were vested. They had performance criteria associated with them.

THE COURT: I guess that's what -- I was asking the

wrong question. Were those -- would those performance criteria have been met?

MR. BUTLER: I think, Your Honor, that was an open question. Some of the -- some of the performance criteria I think could have been met. I think others -- I think it was questionable. It was not based on stock price, for example. And the -- ultimately the -- in evaluating the program, the decision that was made at the time was rather than to have people -- the 2004 program and the 2005 program, those criteria, Your Honor would have had to been earned in the Chapter 11 case. Part of it occurred pre-petition, part of it occurred post. And I know the judgment that the comp committee made at the time was that if we were going to make any payments during the Chapter 11 case that those ought to be made as part of a program presented to the Court. And so -- those programs were cancelled. The 2005 program was in fact paid in, I think, early 2006 under Your Honor's first day orders dealing with -- with employees.

Now, Your Honor, just to say -- and I think it's another of the inconvenient truths there is, and I stand here before Your Honor as corporate counsel for the company and explaining the views of the board of directors, the compensation committee and what the company believes are in its best interest. Throughout this process others represented individual members of management and they had their views. And

many of their views weren't, ultimately, adopted in these programs. But why did we put this up first? Why did the company present this in -- on the first day of its Chapter 11 case? And the reason for that was, I think -- I hope, to the Court was self-evident. And that is, in these large restructuring cases there is never a good time to talk about executive management compensation. It is one of -- another of those inconvenient truths. And the company made the decision that it was important to layout at the beginning what the expectations were even if the company couldn't get all of those elements approved and needed to sort through those elements in connection with the process.

The company believed it was important to maintain competitive pay during the Chapter 11 case, insofar that it's possible. And the evidence in the AIP hearings, the evidence in this hearing, which are uncontroverted is that the executive management team did not have fully competitive pay during the Chapter 11 cases. And we'll talk about that in some detail in a few minutes.

Early on, and I also think it's important and I know Your Honor will do this, the fact is one of the elements of how testimony is presented in this case is that direct examination is replaced by declarations. And the Court doesn't have to and doesn't need to and we understand why, go through the time and resources to listen to live testimony. But it is important to

consider the declarations of Mr. Miller and Mr. Naylor and Mr. Bubnovich in those sections of the declarations that were not challenged on cross examination, and I'll talk about Mr. Miller's in a second. But much of Mr. Naylor's testimony and all of Mr. Miller's testimony was not challenged at all by the -- by the objectors during cross-examination and stands for the testimony that was presented on an uncontroverted basis.

One of the elements of that testimony that was not challenged was the compensation committee process described in Exhibit 90 at page 5. And the -- the facts are that this compensation committee and these three independent directors spent more than twenty meetings over several years evaluating executive compensation from the bottom up. Rewriting and approving a management compensation philosophy, examining every element of the program, receiving draft reports, some thirty of -- there were thirty of them or more prepared; I think they reviewed five or six of them, asking questions, challenging, pushing back, taking some advice, rejecting others as they went through a process that developed into the final report that's before Your Honor.

I think it's important to note, too, we looked at a lot of reports on Friday. I'm not sure, on cross-examination, we ever looked at Exhibit 90 which was actually the report that's before the Court. There were two reports before the Court and we'll address both of them during these arguments.

But the exhibit -- the report that was before the Court is the December 28, 2007 report from which Exhibit -- page 5 that's on the screens is drawn. But it is the report that was submitted and approved by the compensation committee after input with the statutory committees and after a complete review with the plan investors. And I think it's important to look at this process. This is not particularly a business judgment case. This is 1129 not 363. But I think it's important to look at the work these -- these directors did over this multi-year basis to try to come up with a reasonable program in their judgment.

If you look at the Miller testimony, at Exhibit 67, and look at his testimony on experience and the experience he has as chief executive officer and now currently is the executive chair. Paragraph 43 talked about the importance of coming up with a compensation philosophy and strategy. And there is unrebutted testimony that the compensation committee philosophy here reflects a thorough, well-considered and effective philosophy and strategy.

In paragraph 44 of his testimony, also unrebutted and also unchallenged on cross-examination, is Mr. Miller's belief that this philosophy and strategy aligns with the interest of key stakeholders in the case. And goes through and explains each of the bases for that view.

Paragraph 45 of that same declaration also talked about the importance, and this was something that was really a

focus of this Chapter 11 case. I think we forget, sometimes, because we're here at the end and hopefully upon the verge of moving forward, we forget that when this company filed Chapter 11 on October 8th, when I stood before Your Honor with a series of charts and showed you pictures of how Delphi operated around the world, we were filing the largest industrial case in U.S. history in an industry that had just-in-time inventory and with a company that was quite capable, if it did things poorly, of shutting down the entire global automotive business because of its relationship -- it's supplier relationship to every one of the global OEMs across the world.

And I think that we forget about the Herculean tasks that took place and the basic philosophy of the company during the Chapter 11 case to maintain supply, to maintain continuity of supply, to not try to do this Chapter 11, going forward, in terms of disrupting customer relationships. And that work, which was largely executed by the executive management team, is one of the significant factors that allowed the company to exceed its business plan during the course of the Chapter 11 and prepare to move forward going forward, post emergence.

I hope Your Honor has had the opportunity to reflect on Exhibit 66, Mr. Naylor's testimony. Much of Mr. Naylor's testimony at Exhibit 66, which should be on the screen, and I'll just point out to a couple of portions of his testimony

that go to the views of the effort. And as Mr. Naylor testified with respect to the last sentence, the compensation committee wanted the executive comp program to be competitive and at market median. That was the whole program. Nowhere, and I think Mr. Naylor was clear on this in his testimony, nowhere did Mr. Naylor say that every single element independently had to be at market median but the program, the total direct compensation, the TDC, needed to be at market median and they -- and Mr. Naylor testified, regarding a number of things that the company did and the compensation committee did to drive individual elements of compensation towards market median.

But paragraph, I think, 12 of the declaration -- that's fine, we can stick with paragraph 16 but I'll just make a comment. Paragraph 12 of the declaration, I think, clearly outlines the goals of the committee and how they tried to operate going forward.

I think it's also important, and this is something that also was not controverted in any way by the objectors and there is uncontroverted testimony in the record, and I'll go through this, in several places about the fact that this compensation program is very unusual. It requires that all executives that go forward with the company waive all of the rights they have with respect to the company, other than the go forward program that's been approved by the plan investors. So

for example, one of the things that has to be waived are their claims under the change of control agreements that the company had estimated, again with Watson Wyatt's assistance, could be as much as 253 million dollars. And the fact of the matter is that had that 253 million dollars not been wiped out, assuming that people grant us the waivers and they can't get the new program unless they do, and under Section 8.1 of the agreement -- of the plan, we've rejected all of the management contracts and all of the other management benefits people would have. Without this 253 the company couldn't have reached the 1.45 billion dollar limit on UGIC in this Chapter 11 case.

Mr. Naylor also testified, on an uncontroverted basis -- go to the next paragraph, please -- in paragraph 18 about the various negotiations between the committees and between -- I should say discussions with the committees and with the plan investors. And I want to be very clear here, neither of the statutory committees has endorsed this management compensation program. When we settled with the creditors committee, I agreed with Mr. Rosenberg, and I'll say here again today, their agreement with respect to that -- the matters that they had to review does not reflect an endorsement or an independent approval of this program. That was an important point that they raised and we agree with that and acknowledge that they had a particular area they were focused on. We satisfied the requirements of Section 7.8 insofar as

the committee was concerned and we moved forward.

But the fact of the matter is the equity committee wanted the company to reduce the grants from ten percent to eight percent in terms of the total grants that would be available without going out to shareholder approval in the future. And that was done. There was -- one of the suggestions the committee made, well before the final negotiations, was that the non-DSB executives equity or LTI awards be moved to market median in a one-step rather than two-step approach. Your Honor's aware from the record that originally when the company -- the compensation committee understood that the LTI was, in fact, for non-DSB members was in fact over market. The company wanted to take it down in two steps, one now, one eighteen months from now. The committee suggested that we do it immediately and ultimately on the 28th of December that's what the compensation committee agreed to do.

Also in Mr. Naylor's declaration, he talks about, in connection with the ratification of the final report, the steps that were taken and the additional items that -- that the compensation committee considered on the 28th of December. And one of those, and we'll talk more about when I talk about Mr. Miller and Mr. O'Neal at the end of these arguments, and one of the things that was never brought up in cross-examination and never rebutted was the Watson Wyatt report on emergence cash

performance payments for the executive COB and CEO. And there's testimony in the record about those and the report stands for what it states and we'll go through it in a few minutes on an unrebutted basis.

Mr. Naylor also talked about the supplemental life program. And we'll talk more about this, Your Honor, but it's important to know, and this is the kind of scrutiny that the compensation committee went through, this was actually a benefit in the pre-requisites table of the final report. And the supplemental life program is actually a guaranteed death benefit payment that is provided by the company. And it simply says the company's program was, and is, that if you are an executive and you die in office you get a multiple -- your estate gets, you don't, a multiple of your salary if you die in office. And in this company, as in others -- some others, that benefit was also extended to executives when they retired. The fact of the matter is that when you retire, one thing that's true in life for all of us, we're all going to die. And so it turns into a conditional benefit, you know, will you die in office if you get it when you retire turns into a guaranteed benefit. And this is a vested benefit guarantee, part of the program, people have it and the comp committee looked at it and said, you know, we don't think that's market competitive to have it in retirement and took it away from the executives. And the testimony in the record is that's a benefit that those

who had it, on average, had a two and a half million dollar payment -- retirement payment taken away from them which had existed prior to this point and which was eliminated. Just another example of the work the comp committee did in trying to look at every element of this. This wasn't -- this particular program was somewhat esoteric, was tied up in the perquisites of the programs and even every one of those was examined pretty carefully.

Next please. The -- also I talked about the A through F and this is, simply, the one-step transition that we talked about. Paragraph 22, again, uncontested. Please? And paragraph 24 trying to think about -- and this is the idea and you saw some of the -- you saw some of the evidence go in and some of the -- what I think the objectors will argue is contradictory proposals and suggestions back and forth, but Mr. Naylor testified, again on an uncontradicted basis, that the committee considered, over this two year period when they met more than twenty times, a wide variety of compensation, benefits, programs and ideas, things that they thought were right, things that they thought were not right and Mr. Naylor testified, and I thought his testimony was quite credible, about the work that they did to evaluate and come up with the programs. This is not a science, it's an art. There are materiality standards and others which were testified to. And again, the -- I think uncontroverted testimony here is that,

you know, material changes -- changes of five percent, three, five, six, seven percent in that range are not material. There's no evidence in the record to the contrary that they would be considered material. And again, Mr. Naylor's testimony on how they considered lots of various things in coming to the conclusions that they did. Next, please.

And finally, in dealing with his view of a equality of sacrifice and his view and the view of the company regarding that -- that -- the equivalence of sacrifice provision was never intended and could not mean that anyone would be paid wages or compensation below market. And that is a view that the company -- that this program is based on. Next, please.

Let's move on, if we can, to -- that's okay. Let's move on, if we can, now to Exhibit 144. This is the -- and I just want the Court to understand the updates that were given on the comp committee process. The statutory committees, of which the objectors are a part, received many briefings on the work of the compensation committee, the effort that was going on, the different points that were happening, the input that was being sought. And Your Honor sees it -- hears it February 7, 2007 report at Exhibit 144. At Exhibit 145 here's a update back in March of 2007 and again in Exhibit 150 there was a further update in the summer of 2007, as the company reports on the process that it's undertaking to the committees that culminated in a lengthy presentation at Exhibit 151, which I

hope Your Honor will have the opportunity to look at. I'm not going to go through it in great detail but on the September 11th meeting the committee was informed that the EPCA condition, which we'll talk about in a few minutes, had been satisfied. That is that the lead plan investors had concurred in the compensation program. And this report that follows is a summary of what that program is. And I'll just ask you to flip through it, I'm not going to go through it in any great detail. But the process was reviewed. Each of the elements of the program were reviewed on the following pages. And so, in September of this year the -- shortly after the original plan of reorganization was filed on September 6th, the committee received a comprehensive review of much of what Your Honor has seen during the course of this hearing.

So the process here, Your Honor, we would argue is a carefully crafted process, a huge amount of effort. I think if Your Honor considers this in terms of what independent directors might do I think it's the amount of time and effort and care that was taken by the independent directors here, I think, frankly, in a Chapter 11 case is almost unprecedented. Just a huge focus on working on this, on getting input from stakeholders and ultimately -- and when I say stakeholders I mean the two committees on specific items and the plan investors in detail.

Your Honor's aware, because you approved the EPCA,

that there was a specific EPCA requirement we had to deal with. It's set forth in Exhibit 3, Trial Exhibit 3 in Appendix A, and there's Exhibit 7.11, this is the -- this is the particular provision on page, I think it is, 59 of the EPCA. And this is a requirement that we do two things, the company do two things. One, we enter into agreements, a compensation program, that's reasonably acceptable to the lead investor and secondly, it's also important -- second in the hole, that we resolve any claims of the former executive officers on terms acceptable to the lead investors or as otherwise ordered by the Bankruptcy Court.

There was a requirement here, fundamental to the investment agreement, that the -- that the plan investors have a material say in the go forward program and that the former program be wiped out on terms acceptable to them. That's what 7.11 required. That's what this provision required at (xxi) on page 59. And what ultimately happened, in connection to that, you've already seen and the record is clear with the evidence that ADH signed off on the program, that we complied with provision 1 and also complied with provision 2, and we'll walk through that and explain it.

In doing that, Your Honor, and I don't -- I won't go through it but Exhibit 90, on pages 39 to 43, again the final report that's before the Court today that wasn't looked at much on Friday, summarizes for Your Honor on pages 39 through 43,

and we'll not go through them individual, all of the changes that the plan investors required. This wasn't simply an idle review. This was a line-by-line, provision-by-provision review by the plan investors of what needed to be done in order to get their concurrence and that's set forth on each of these pages as you go forward.

So the uncontroverted testimony in the record, Your Honor, is that the plan investors did what was required to be done under the EPCA, that the company performed, that the plan investors concurred in and gave the approvals necessary to suggest that they had fully reviewed this as the new money into the case, those people that are going to put in the investment to allow the company to go forward that they had signed off as the EPCA required.

Now all that culminated in a series of plan documents. And let's briefly talk about the plan documents. The plan documents begin with Section 7.8 of the plan of reorganization. We looked at that a few minutes ago. And it carries forward what the EPCA required. One, that we enter into employment agreements and other programs that are set forth on Exhibit 7.8 and that we -- that the executives had to waive everything that they had previously in order to get the benefits of this program. And that ultimately the other agreement that we had with them was that they would also sign off on the emergence payment separately, which they did and

that there would be -- this also -- there would be this review opportunity on an aggregate basis, by the creditors committee, which was also completed and satisfied. That condition was also satisfied.

Now, again, just a note here on the record, Your Honor, the disclosure statement and the original exhibits to the disclosure statement included sixty-one pages of disclosure and information about executive compensation. Another, sort of, unprecedented amount of disclosure in this plan process. I don't think that anyone here could probably show another plan in which as much disclosure has been made. Yes, it was a multi-hundred page disclosure statement. But the fact is that there was detailed disclosure in sixteen pages of the disclosure statement from DS-92 through DS-107. And there was a plan exhibit, 7(a) that was forty-five pages giving all of the summaries of the plans and having a form of the employment and CIC agreements.

And, Your Honor, I would point out that the eight points -- we'll talk about the percentage of the -- the LTI percentages, but you'll note that the eight percent number is here in the plan and it was reduced from ten percent after discussions with the equity committee and was actually in the plan in 7.8.

I also, Your Honor, would like to point out to you what plan Exhibit 8.1(a) says. And that's on Exhibit 2,

Exhibit 8.1 to Exhibit 2 on page 1. And again, this is the list of executory contracts and leases to be rejected. In this case every lease, every executory contract the company has is being assumed other than the agreements relating to management. If you look at 1, 2 and 3, they all relate to management.

As we went forward and negotiated this over the course of December, if you look at the supplement to Exhibit -- the Plan Exhibit 7.8 that was filed on December 28th, again, this was -- and again, to be clear, this supplement, Exhibit 2 was filed on the deadline Your Honor required in the solicitation procedures order in connection to the time that all the plan exhibits had to be filed in order so people could make informed decisions when they voted on the plan of reorganization. Included in Exhibit 7.8, in that supplement, were a number of important disclosures that related to executive compensation.

First, there were -- in reviewing the final program there were two discreet items that Watson Wyatt continued to tell the compensation committee could not be benchmarked as being market competitive. That included the second step in bands A through F, in terms of the go forward LTI. And it included the supplemental life benefit program that I talked to you about in terms of for retirees. The compensation committee voted on that day, as was disclosed, to eliminate -- to confirm its prior vote to eliminate the retiree benefit, supplemental

life benefit. Those two and a half million dollars per executive on average in terms of the senior executives, you have the DSB and some others. And it also -- it also agreed to swallow hard and take the entire adjustment for LTI in one step for bands A through F.

Just so the record is clear, and the record -- and it is clear on this point, that adjustment means that there is a fifty percent adjustment in the LTI opportunities that bands A through F had gotten historically to what they're going to get under this new program going forward. And that was disclosed. The other disclosures the company made in connection under 7.8 on December 28th is as follows. The company -- the next major disclosure -- you can move forward -- was to formally approve Mr. O'Neal's contract. This was the contract, and you heard the testimony from Mr. Naylor, this was the contract that was negotiated between the new plan investors, those people that will have three members of the board of directors that were on the selection committee to pick the executive chair of the company and the plan investors had a negotiation with Mr. O'Neal as to a form of contract using the prior change of control agreement, employment agreements that had been filed back by the company on -- earlier in December it used -- it made these -- it went through and made various changes and negotiated with Mr. O'Neal for circumstances that are related to the chief executive officer.

And so those were approved and they were filed. So as part of the Plan Exhibit 7.8, that supplement on December 28th, we filed the entire contract for Mr. O'Neal and the entire change of control agreement for Mr. O'Neal, which are set forth and I'll address it a little later when I talk about Mr. O'Neal's compensation.

We also, then, continue to negotiate with the creditors committee. You had these specific rights under Section 7.8 of the plan. And those rights resulted in a plan modification -- I'm sorry. Excuse me. Before I go to that, let me just deal with this last item in 7.8.

The company also -- and we'll talk more about this. Your Honor saw this on cross-examination and re-direct, the compensation committee also made a decision on the 28th, which was included in the plan exhibits and publicly announced, that it made it's final determinations about the emergence payments for Mr. O'Neal and Mr. Miller which were based on a series of factors set forth here, not the original LTI program but rather a separate independent set of factors. And a report, which was never challenged by the objectors during the cross-examination, the emergence cash payments report by Watson Wyatt dated December 28th. Next, please?

And then, ultimately, there was disclosure about the changes -- these changes, what they would do and now, Your Honor, you can see that the effective date payments in the

aggregate are eighty-seven million dollars or thirty-seven million on an annualized basis. Those are the cash payments that are going forward -- excuse me, the -- I got that right? Yeah. And then the change in bands A through F as we go through. And these are -- those changes were ultimately clarified.

Your Honor, we then went on, after that period of time the company did -- go to the next document, please. And we continued to negotiate with the creditors committee and with their expert, Pearl Meyer, on her view versus our expert's views of various issues. And at the end of the day, you know, we resolved the discussions between the parties by this language, which was specifically approved by the creditors committee as resulting in additional reductions. There were two things that were done. One was to make cash payable over two different -- in two steps, which we agreed to do. And then there was a reduction here, you can see, in the -- a further reduction in the -- in the LTI which was a reduction of ten million on an annualized basis, fifteen million on the aggregate basis in the plan. So those two additional changes were made. And as you can see on the next exhibit there was a confirmation from the committee that they were satisfied that this met -- this met the requirements of 7.8.

Mr. Rosenberg, as you can see in my exchange with him, was very clear and I'm clear on this record again today

that this -- that we acknowledge the admonition from the committee that we should not use the settlement to suggest the committee affirmatively endorses the program, another inconvenient truth in these cases is nobody wants to endorse the program. We acknowledge that. That's not what 7.8 was about. But we did satisfy the conditions of 7.8 after an independent review by the creditor fiduciary.

That's what went before the parties, Your Honor, for voting. And the results, in -- on Exhibit 95 which Your Honor has seen before, page 55 of Exhibit 95, the results are an overwhelming acceptance by eighty-one percent of the parties that cast ballots. There is a rejection by class 6C but there's no objecting party here at confirmation with respect to 6C that his objection has not been settled. And we'll deal with 6C and evidence in compliance with that under 1129.

So eighty-one percent of the ballots voted in favor of the plan. That doesn't, obviously, change the Court's independent obligations to decide whether we've met the requirements and hurdles of Section 1129, including 1129(a)(4) and (a)(5) which can touch on emergence payments and on management compensation. However, the debtors' view is that this program should be treated like all of the other provisions of the plan of reorganization, subject to 1129. And when you look at the vote -- the vote on page 55, on page 58 in terms of all the sub-classes voting in favor and in looking at it even

from a debtor perspective on page 59 of that report, again Your Honor is familiar with these

And I would point out, Your Honor, that while this is not dispositive in any way the reality is that neither the UAW or the IUE International voted against the plan either. They didn't vote to reject the plan. And in fact the ballot reports, you'll see them next, this is from Exhibit 62, the IUE voted to support the plan. And the UAW didn't vote on the plan at all. Neither of them rejected. I will note that some of the, as indicated on the next exhibit, some of the IUE -- the IUE locals voted to reject on a one dollar basis but filed a ballot to reject in 1C. But the large claim, the 126 million dollar claim, was voted in favor.

And what this means, Your Honor, the bottom line is that impaired classes, except 6C for which there's no unresolved objector, voted overwhelmingly in favor and neither of the objectors before the Court today voted to reject. And what is being asked for in these objections, in our view -- in the debtors' view, is that you're being asked, Your Honor, to in some respects ignore the plain vote of the unimpaired classes. To ignore the twenty plus meetings of the compensation committee and the work that they did, to ignore the third-party consent rights of the plan investors and all the work they did and the modifications they made. And to ignore the creditors committee's separate review of the -- the

limited review that they did and the determination that 7.8 of the plan, insofar as the creditors committee had a role, that that provision was satisfied.

And so you have, Your Honor, it seems to the debtors you have here, we think, a pretty -- an unrebutted case and more than a prima facie case in terms of process, plan investor involvement, the way the plan documents were prepared, the amount -- the unprecedented amount of disclosure to creditors and equity holders and other stakeholders and the overwhelming vote in favor of the plan.

Having said that, we acknowledge that Your Honor has an independent obligation to review the plan taken as a whole and decide whether the plan taken as a whole complies with 1129. And for that reason, let me spend the next few minutes talking about specific issues. I want to talk briefly about -- start with the peer group analysis.

The record here is again, I think, uncontroverted. That if you look at Exhibit 265, and this Exhibit A to 265, page 36. This was the 2005 peer group. And if Your Honor takes a look at this peer group and then takes a look at the next page, which is the peer group for 2006 and you look at all the companies that the debtors knocked out. And then you look at the final peer group, and again going back to the final report, one we didn't look at much, Exhibit 90, page 33 of the final report, you have a peer group that Mr. Bubnovich

testified to at the end of the day was reasonable and that Mr. Naylor testified to met the requirements of the compensation committee. And he even testified, on cross, as to -- and in his declaration as to his individual views as chairman of the comp committee from his prior experiences at other companies including DuPont, as to the appropriateness of the peer group in terms of being from different industries and a range of revenues and a range of considerations in terms of how someone is selected for the peer group.

Now the fact is, we had a lot of examination on Friday about testing. And we were, in some respects, the debtors were asked on examination to -- and cross-examination to defend against the expert not in the room. And that is allegations that the creditors committee expert had even though the creditors committee had settled and her report had been withdrawn and is not in evidence here and not before the Court.

And there was a fair amount of discussion with Mr. Bubnovich about the way in which he went to test this peer group when we looked at manufacturing groups. The fact is that all the testimony -- all the testimony about Caterpillar, all the testimony about Eaton, which was Ms. Meyer's preferred company which moved things lower. Caterpillar, which at the end of the day the record, I think, indicates would move things higher. The fact of the matter is neither Eaton or Caterpillar are in the peer group before the Court. It's important the

record indicate that. The -- what's before the Court in Exhibit 90 on page 33 has neither of those companies. And the reality is that they were -- as it looked at manufacturing groups, there was a lot of testing that went on and the uncontroverted testimony from Mr. Bubnovich was that he went through a -- a second round of testing in which he looked at ten basic manufacturing companies, those are the ones that were in the peer group that nobody was contesting. And excluded eight -- the creditors committee compensation consultant didn't like. And then created another list of manufacturing companies that included all of the companies that the creditors committee compensation consultant had used and came up with a potential pool of manufacturing companies. He testified from six billion to forty-one billion and then created a series of fifteen peer groups, Mr. Bubnovich testified, and went through all the various permutations. And Mr. Bubnovich's testimony was when he tested that, that all of them -- I shouldn't say all of them -- that the majority of them clustered around being somewhere in the negative two to four percent range when compared to this peer group. And that was another set of tests.

But I do want to point that all of that -- all of that testing that we talk about, all the issues relating to Caterpillar, Eaton, Pearl Meyer, all of that discussion has to do with the testing of -- the various testing that was done in connection with the negotiations that resulted in the

settlement with the creditors committee as it related to 7.8 and the satisfaction of that condition.

The -- and so, Your Honor, I don't believe there's any evidence in the record to suggest that the final peer group, that is the peer group on page 33 of the final report, Exhibit 90, is in any way flawed or in any way inappropriate in connection with these cases. In fact, when you compare it to the peer group that the compensation committee started out with back on Exhibit 8 to Exhibit 265, the 2005 peer group, there is a huge migration from size of company, from industry to putting in a number of companies that are much lower in revenues, much more focused -- representative in the automotive industry by still maintaining the diversity of the -- of the peer group. And when you look back again at the peer group, the final peer group on page -- Exhibit 90, page 33, what you find is, and I understand that there was lots of questions about Pepsi and Coke but there's nothing in the record. There's not a single bit of evidence in the record. Not a single expert, not a single bit of rebuttal to suggest that that is inappropriate and that that's an inappropriate way to construct peer groups.

When you look at the peer group TDC analysis -- this is Exhibit 95, page 73 and these were charts that were used on cross-examination, some of these charts. The fact of the matter is that for the DSB taken as a whole -- and Mr. Naylor's testimony was we need to take these things as a whole. I look

at the total direct compensation as a whole, not necessarily every individual element. And what you see, Your Honor, is that the DSB peer group -- the DSB total direct compensation is less than the peer group analysis.

When you look at the next page, which is the non-DSB, there was -- there is a less than five percent difference between the -- and that should be and we all stipulated that's non-DSB not DSB at the bottom -- that the three 375, while marginally higher, I guess 8,000 dollars higher than the -- not 8,000, excuse me -- yeah, higher than the peer group. The testimony, again uncontroverted, is -- both by Mr. Naylor and by Mr. Bubnovich, is that that was not material. And again, nothing in the record to suggest otherwise. I think it was Mr. Kennedy who tried to suggest, well if it was twenty-five or fifty or 75,000 or some other number that's not in the record what would that mean? But there's nothing in the record to suggest that the -- that this is an unreasonable analysis.

Similarly, when you move on to the last page of that, this is also -- in looking at the emergence payments here, both the LTI opportunity which will be awarded over the next eighteen -- excuse me the LTI opportunity -- the cash opportunity which is going to be dealt with now, how that fits in. And again, this we'll talk about in a few minutes, that opportunity has been discounted, effectively, sixty-seven percent against the original LTI opportunity that was proposed.

THE COURT: Let me make sure I understand on the peer group. First, for the DSB, am I right that the peer group is not used for those who aren't covered by proxies, is that correct?

MR. BUTLER: Your Honor, it's -- it's -- as I understand it and I think what the evidence suggested is it's not directly used it's interpolated.

THE COURT: Okay.

MR. BUTLER: So it's averaged in for peer group purposes.

THE COURT: And then as far as the peer group and the final report, the only one that was in Chapter 11 was Federal-Mogul?

MR. BUTLER: I have to go back and look, Your Honor. That may be correct.

THE COURT: I think the only one that may arguably have been in some distress at some point was Visteon?

MR. BUTLER: Visteon was in distress. I have to go through and look at the others. But again --

THE COURT: Well, why don't we do that?

MR. BUTLER: Okay. Let's go back and look at --

THE COURT: You can just bring it back up.

MR. BUTLER: The -- I mean I'm -- on a public record I don't know that I would argue about people who are in distress or not but there are some other -- there are certainly

a couple of other companies that have gone through some restructurings. But, you're right. Federal-Mogul is the only one that's in Chapter -- who was in Chapter 11 and Visteon is, I think, viewed as a troubled supplier at the moment.

THE COURT: Now, it -- can you go to the next chart? The one that was up after this one that shows the DSB pie chart? Okay. I don't -- I actually think there was one breakdown for Federal-Mogul but it was just for the two senior most executives. But is there anything in the record to suggest that for Federal-Mogul or Visteon there would be a sixty-one percent of salary long-term incentive opportunity for senior executives?

MR. BUTLER: Your Honor, there are 570 exhibits. I'm not aware -- I didn't look at it on that basis because at least the debtors' case, which Your Honor may or may not accept, but the debtors' case and I think the testimony both from Mr. Bubnovich and Mr. Naylor is the peer group's not constructed nor, frankly, would the debtors think it's appropriate to construct a peer group based on Chapter 11 companies. This is a peer -- you know this company, and again I think, sometimes, you have to take a step back and focus on the fact that this is a twenty-odd billion dollar plus company, the largest supplier poised to be, certainly, again the largest supplier in the world of technology in automotive parts to the automotive industry worldwide. And it views the peer group

it's going to use -- it's not going to set up a peer group of people who are bankrupt. I mean, there's nothing in the record that suggests that that would be the appropriate way to think of this.

THE COURT: Well, except Mr. Naylor testified that his -- his approach was novel.

MR. BUTLER: No, I don't think he testified that the approach relating to the peer group was novel.

THE COURT: No, but his approach of applying a peer group LTI opportunity to a cash emergence bonus was novel.

MR. BUTLER: No, you're asking about the cash -- I haven't -- I'm not really to the cash emergence yet, Your Honor.

THE COURT: I'm just -- I'm just trying to figure out the relevance of the peer group analysis to this -- that aspect of this proposal.

MR. BUTLER: Your Honor, I don't -- I don't know that -- that the -- I mean, I can go to -- this particular analysis right here, on page 73, and the next one on page 74, I think, go much more to the weight of the evidence with respect to the design of the program, the post-emergence program, the equity program.

THE COURT: Okay.

MR. BUTLER: I'm going to address cash separately.

THE COURT: Okay.

MR. BUTLER: I think these go much more to that. I think what happens on page -- what you might be talking about in terms of page 72 on Exhibit 95, the next page, is this is the -- this is the example of competitive practice against what the Delphi executives are getting in terms of shortfalls. And this is, obviously, the -- while not referenced in here, this pie chart is referenced against peer groups. And that -- and I think I hear Your Honor saying gee, is the competitive shortfall one that Your Honor's going to give weight to or not give weight to. I hear that -- at least I think that was the question you were asking from the peer group measurement as related to the cash emergence.

THE COURT: Right.

MR. BUTLER: The -- the salmon-colored piece of the pie and the white piece of the pie.

THE COURT: For example, when Watson Wyatt was asked to advise the compensation committee about what would be an appropriate emergence bonus for Mr. O'Neal and Mr. Miller, it didn't look at the twenty or so peer companies. It didn't do comparable LTI analysis. It simply looked at a handful of Chapter 11 cases and saw what senior executives got in those cases.

MR. BUTLER: Yeah, I think Your Honor, with respect to the uncontroverted testimony relating to Mr. O'Neal and Mr. Miller's -- that report, they did look for those two positions,

at what happened with those kinds of executives in other Chapter 11 cases. The reason -- and again, what the testimony has said and what the record indicates and Your Honor -- and we'd ask Your Honor to consider is the whole premise of the program from the time the KECP was put into place back in terms of our proposal, back in 2005, was the company believed that it needed to provide for its executives, worldwide, the same kinds of opportunities that they could get from competitors, all right. And they certainly didn't say to their executives, we want you to evaluate yourself by everybody who's in bankruptcy. They certainly didn't say, you know, that's -- those are the guidelines. And in fact, to the 113 executives not involved in a Chapter 11 process but who, from a perspective of, you know, how you manage a global enterprise, all had to be managed the same way because you can't really, and I recognize the testimony said you could be sure every last country didn't do something. And we're not suggesting -- I can't give you this confidence, Your Honor, that every last country -- that there was no adjustment anywhere but the evidence is uncontroverted that with respect to LTI opportunities and similar opportunities, all executives everywhere were treated the same.

And the fact is that what the company believed, you know, this large industrial company, globally based and globally competitive in terms of what it needed to do for

talent and resources. What it decided it needed to do was to try to provide opportunities that were similar to companies outside of Chapter 11 out of a fear of losing their talent and this wasn't on retention. I'm not going to make a big retention argument here although, I think, inherently all compensation is in some respect -- has a retentive element to it. But this wasn't intended as a retention program and it wasn't presented that way. Although I recognize, at one point, Mr. Bubnovich in the early reports compared -- in looking for market comps, benchmarked it against some of the retention programs that had been put in place by the companies because it's the only data, he testified, he could find.

But in any event, I think the -- the -- and we'll talk about the cash opportunities in a few minutes. But I recognize your question here, Your Honor. And I think that -- and I acknowledge that as it relates to the cash emergence bonus or payment, the payment opportunity for cash emergence, at that particular opportunity we need to make the case to you, and I think we did on the record but I'll try and do it in argument in a few minutes, about why that, from an LTI perspective, made sense.

THE COURT: Okay.

MR. BUTLER: And I just wanted to cover off the peer group point and if I may, Your Honor, I wanted to briefly make sure that we're clear on the record about SERP, if I may. And

that is, I wanted to point to Exhibit 2, again back to Exhibit 8.1(a) and page 2 of that exhibit. And just so the record is perfectly clear here, we did terminate all agreements for SERP benefits and that's the third paragraph of Exhibit 1(a). And one of the things that was required by the plan investors, among others. And so, when you look at the comp exhibit that was used on Friday, Exhibit 302 at page 7, and there was much made about the -- how the SERP program somehow didn't line up with the retiree program here. The point was made that four or five, and I don't know how you'd get to five, but five had cancelled their programs. In fact, Delphi cancelled its program too.

Now the reality is, and the disclosure statement talks about this, the reality is that those parties will -- are all class C creditors, class 1C creditors. And they will receive the same treatment as everybody else does in class 1C, as their claims are processed. And they will get the plan currency that everyone else gets. And that's how all of the retiree benefits under the SERP are going to be dealt with.

In terms of the go forward benefits, the active benefits, again on this comp you have, that was used here, you have four or five companies that continued these and some companies that did not. However, there is not a single company up there, that I'm aware of, that did not continue it, who provided a dividend to creditors that even approximated par

plus accrued of plan value. Most of those dividends were either -- were pennies on the dollar, certainly less than a quarter, and -- and nothing like the consideration here. And they also, you know, when you look at the automotive industry and I recognize that three of them -- that Federal-Mogul did continue it, Collins & Aikman and Hayes did not, they replaced it actually. The -- this you can see in terms of the DC SERP, so they did have a SERP benefit going forward. And what we're doing here is freezing the SERP benefit and providing a new benefit going forward.

And I think it is important, again, to look at the final SERP report, Exhibit 90, pages 21 to 22, again something we didn't look a lot at -- a draft of one of these earlier pages earlier on. But this explains exactly what we're doing and page 22 of the report has the benchmark -- what was proposed against what was benchmarked as being competitive. And it would certainly seem to line up appropriately there.

A lot was made of the 5,000 dollar cap. I think Your Honor's aware and can take judicial notice of the fact that 5,000 dollar cap was put in in the first day motion here to create a temporary authority for the payment during Chapter 11 of the SERP payments. It was not a perspective cap. It was not a permanent cap. It was part of the first day orders and it was used only during the Chapter 11 case. It was never intended to be permanent. Instead, it was -- it intended to

deal with while the company was in Chapter 11.

Let me now address emergence equity and then I'll go to the cash awards in particular. With respect to emergence equity, one item that I want to make clear on the record, I think it's clear, but I just want to make sure we say it because I -- I actually recognize the objectors concerns that it could be -- the record could be confused on this point and that is to talk about, in terms of the emergence equity awards, at what price they're struck.

And the answer to that question and the answer has always been that they would be struck at plan value. And by plan value, if you turn to Exhibit 95, page 60, the plan value that we're dealing with right now is, sort of, the implied plan value. The price hasn't changed. It's $59.61. And they'll be struck at the same price as all the other equity is that's being distributed in connection with the plan. The common equity that's being distributed at the plan, albeit as we indicated in Mr. Resnick's declaration and provided, again, in that portion of the hearing that was also uncontroverted. Because of the additional liquidity the company has the implied plan value here is no longer, really, in the thirteen billion range it's more around 12.8, closer to the midpoint of Mr. Resnick's valuation of twelve billion, 813 million. But the number is 59.61. And so when you look at that on Plan Exhibit 95, page 60 and page 61, again, just to make the point,

this was the description in the original -- this is page 61 of that exhibit and this was in the original and testified to by Mr. Resnick in his declaration, Exhibit 85, this was the original disclosure (xvi) of the disclosure statement regarding the low mid-point plan value and high-end. And then that was modified on page 62 of the -- of Exhibit 95 and again in Mr. Resnick's uncontroverted declaration, Exhibit 85.

And as a result of there being additional cash and therefore less pro forma debt to be borrowed, the result of that, obviously and the shares are being held constant. That basically means that 5961 stays constant but it moves down in terms of implied plan value, in terms of the arithmetic and so that the value which management and creditors are taking this currency is at 12.8 billion. So I just wanted to make sure that was clearly on the record.

The second point I wanted to make about emergence to the equity is to talk about the percentage comps. If you go to Exhibit 265, I think it's Exhibit 3 to that document at pages 24 and 25, there was a report here that that I think made it clear and I think it's uncontroverted that, you know, when you look at the amount set aside for -- for management that it's all about the percentages, not the absolute value. And that is, if you look at the percentages on this plan, in Section 7.8 it's eight percent. You can see the equity dilution in the S&P 500 is -- the median is 13.11 percent. In the top 200

companies its sixteen percent.

And if you turn to page 25, all this is, sort of, uncontroverted. In fact the eight percent is at the low end of the range. And there's nothing, as I said, in the record to the contrary on that. And the record's also clear that only three percent of that is being used now. And the other five percent, to the extent it's used, is determined by the emergence board of directors, the new board being elected by the creditors.

Why have eight percent in here? Why have any percentage? Why do all the plans of reorganization typically have these set asides in the plans? The answer is pretty simple. If you don't have the set aside then you have to hold shareholders -- special shareholders meetings when you get out and go through this. So people, instead, do this as part of the voting process in connection with emergence. And -- so I just wanted to point that out.

The third point I'd like to make about emergence equity, in addition -- is, and this is at Exhibit 3, it's described in the disclosure statement at pages 98 and 99, I just wanted to talk about -- focus us on how these awards are structured and how their determinations are made. This was part of the negotiations with the plan investors, it got their concurrence. And the important element here, I think, is to point out that half of these are incentive based, half of these

are time vested. But the determinations of what those performance measures will be is going to be made by the new board of directors, the post-emergence board of directors not by the current compensation committee.

So, how these awards are structured exactly, what the delivery mechanism is for various of the bands and how the -- what the performance measures are for the performance restricted awards will be determined by the creditor selected board of directors.

And the last point I wanted to make about emergence equity is, again if you look back at 7.8 and the modification that we put in place, we now have a modification that provide an LTIP opportunity at emergence of fifty-eight million on an annualized basis or eighty-seven million in the aggregate. And that is a number that was -- that has been approved by the plan investors and that the creditors committee has indicated satisfies the requirements of Section 7.8 of the plan.

Turning now, Your Honor, to cash emergence. First I'd like to -- what we've got up on the screens is Exhibit 265. And there was quite a bit of testimony back and forth about this and the reality is that the company did use LTI opportunities. And the testimony, I think, was less than crystal clear on this issue because the cost number kept moving around in terms of what the cost was, as in Mr. Bubnovich's declaration he dealt with this. But the testimony, I think,

the focus was that this -- the delivery vehicles was a third cash to the PAP program I talked about, two thirds of which had been forfeited by the executives. Forty percent in options until 2005 when it was replaced with the twenty-one million dollar cash retention program. Fourteen million dollars of which was forfeited by the executives when the company entered Chapter 11. And thirty percent RSUs.

And I believe Mr. Bubnovich's testimony is that this costing here is his estimate of what the costs of those programs would be not, I think, what the targets are. In fact, there is no evidence in the record, I think, to contradict the view that the targets here, you know -- I don't believe the targets change. The costing changed depending upon what the price of the stock was. I think we actually look at the stock value in those particular years; look at the pricing of it, the cost may have varied. But whether that's clear or not in the record, I think the facts are. Whether it's ultimately clear in the record that the actual target between 2003 and 2005 for executives never changed from that approximately 110 million dollar range that Mr. Bubnovich testified to. The cost of it changed depending upon the delivery vehicles and the pricing of the stock at the time.

But the fact is, you know, when we walk through this program I want the Court to -- and we'll end on this point, as Your Honor evaluates this the reality is that at the end of the

day you asked -- you asked and I think Mr. Bubnovich testified to the fact and I think the other declarations and the program makes clear that the performance element of this particular aspect of the program was defined in two ways. One there was a twenty percent initial discount taken and then second, this program had a performance -- a time variable performance. That is to say, the amount of the award, which was a discounted amount to the original LTI opportunities, was fixed for the duration of the case. And therefore -- and I think the purpose of ultimately of page 16 in the original presentation of what's before the Court on Exhibit 3 to Exhibit 265 is the fact that if the company was able to get out in fifteen months, these awards would have more value in real terms to the executives then if it took eighteen months because the value to them would go down. The aggregate costs wouldn't change but the value would go down over time.

And ultimately, the value ultimately, you know, was estimated at the time of -- if you remember -- if Your Honor remembers when we sat before you or stood before you at the opening of the case, the company estimated it would take eighteen months for the company to get out of Chapter 11. And therefore the company's view at the time was that these opportunities have been discounted by essentially fifty percent.

The testimony in the record was that it was based on

110 million dollars worth of opportunities on an annualized basis. They would have gotten 58.6 million dollars and it was about a fifty percent discount. In reality, because the Chapter 11 has taken twenty-seven or twenty-eight months and they have not been given any additional adjustment for these awards, the effective discount is actually sixty-seven percent.

And while I know Your Honor expressed various -- had questions and probed into this issue, I would simply, from the debtors' perspective, take the view, I would ask Your Honor to consider that once you discount the program by two thirds, in terms of the effective discount here. To the extent that Your Honor had any particular concerns; I would hope that that would satisfy them. Because what's effectively being delivered to executives here, is a third of what they otherwise would have been entitled to.

THE COURT: But when you say that they would have been entitled to, they never got 110 million dollars in cash?

MR. BUTLER: That's correct. So Your Honor, the question is how many different ways do you want to discount. I'm saying, once you take two third of it away, effectively, you discount it by sixty-seven percent. If you want to discount it for -- you know, a third of it was cash. A third of it was RSUs, a third of it was -- and in fact, in 2005 -- I'll just make the point, we were criticized in cross-examination that the company didn't pick 2005. As the

testimony indicates, as the record indicates, had we chosen 2005, right, sixty percent -- seventy percent -- seventy percent of the program would have been cash driven because that's what the 2005 program was. The testimony, again, is uncontroverted that the -- that the stock options were replaced by retention cash in 2005. And a lot was said about how we were criticized in picking 2004 instead of 2005. Had we picked the delivery vehicles in 2005, seventy percent would have been cash, thirty percent would have been RSUs. That is -- you know, it struck at whatever the value was at that point in time, in late 2005 when we were getting ready to file.

And the -- my only point is, from those delivery vehicles the fact is that the effective value of -- to the executives of those awards had been discounted by two thirds. I mean, it's just math. That's what they have gotten here. And it's also, I think, uncontroverted here that the -- and we'll talk about -- we'll look at some comps in just a few minutes and some other opportunities here. But the reality is, and I'll do this when I talk -- there's a chart that comes up later on, in which, you know, for example the LTI opportunities in Northwest -- I mean, you know, it goes across the board. But in Northwest the LTI opportunities were continued during the entire Chapter 11 case as ordinary course. They never had this issue. They never had this fight. They were just continued.

THE COURT: And what were they?

MR. BUTLER: I don't know what all the LTI -- Your Honor, I presume they had a competitive LTI program. That's what companies tend to do.

THE COURT: I doubt they were cash.

MR. BUTLER: You know, well they would be whatever opportunities they delivered -- however they calculated the currency in Chapter 11, Your Honor.

THE COURT: I repeat, I doubt they were cash given, and I read this again today, Judge Garber's remark on what the executives kept and didn't keep in Chapter 11.

MR. BUTLER: I'm only reporting them. Your Honor, with respect to -- again the report finding. If we go to Exhibit 90, page 31, again the final report, as I said the final report provides thirty-four million dollars on an annualized basis. And the -- and by the way it's not really accurate anymore that it excludes the COB because it's not -- it really doesn't at this point. As everything's shook out the total amount was eighty-seven million dollars including the COB's award. But it's a -- it's still a sixty-seven percent discount.

Now let me address Mr. O'Neal and Mr. Miller. Mr. O'Neal, if we go to Exhibit 91, this was the emergence cash program from Watson Wyatt, a report that was not controverted by the objectors. And if you go to -- and this is Bates

stamped. If you go to Bates stamp 4562, here are the examples of what they looked at in terms of what senior people got. The -- most of them much, much smaller companies than Delphi. But you saw -- they called out the -- a retention bonus of 1.5 million for Mr. Clausen and then three and a half million dollars in total enterprise value payments. In Collins & Aikman, a range of 1.7 million dollars; in Cow Pine, a 15.7 million dollar payment. In Enron, Mr. Cooper got twelve and a half million on top of the additional payments. In Interstate Bakeries, much smaller than this company, a range of four and a half to twelve and a half. Dana -- Mr. Burns had the opportunity to receive three to four and a half a year, going forward. And Mr. Steinman (ph.) -- this is just the point. It's really unknown because the programs were continued. You can see the notes there. It's just not clear from the record as to what payments were actually received.

And then there is a Mr. Grinstein at Delta who took nothing in terms of incentive opportunities. And we're going to hear from the unions because they designated aspects of that record. We'll hear from them about their view that Delta was the right way to go.

And if you look at the next pages, you have a recommendation here and described, and I won't go into detail, that said the fifty to the seventy-fifth percentile that these would be the ranges that Watson Wyatt found would be

appropriate. And if you look at the conclusions on page -- at Bates page 4564, the various factors that they -- they reached.

Now, the view there was that five to ten million dollars would be within the range of competitive practice and an even higher price would take place if you took into play foregone salary. The -- if you look at the supplemented plans, 7.8, for Mr. O'Neal -- just focus on Mr. O'Neal for a minute. Mr. Naylor testified about notwithstanding the 500,000 or so waiver of comp that Mr. O'Neal gave up in the Chapter 11 cases, that they evaluated the 5.3 that was in the exhibit agreement. They had talked -- he testified they had spoken to the -- conveyed that recommendation to the plan investors based on all these factors, that that was what was settled on in the plan investors agreement, ultimately, and that they approved that agreement. So that payment to Mr. O'Neal had the additional benefit of the third party negotiation with -- with the plan investors. And it also had the benefit of the compliance in Section 7.8 of the review of the creditors committee which had the opportunity to argue if they had a problem with the cash emergence payments in the aggregate. And the committee, as is clear from the record, reached the agreement that the terms of that section were satisfied based on the adjustments made to the program.

Turning to Mr. Miller's compensation, Mr. Miller's compensation was a little bit different, Exhibit 67 at page 16,

footnote 2, Your Honor's aware of this. In January of 2006, Mr. Miller gave up any compensation during the course of the case, took a buck for the rest of the case and in anticipation of a final payment by the board at the end of the case that was not related to any specific program but an overall judgment about what would be a fair and reasonable payment to him.

The uncontroverted testimony -- we hear a lot about his original sign-on bonus or payments. And the uncontroverted testimony here is that that payment was made to induce Mr. Miller to come to Delphi and replace other streams of lost income.

It's also Mr. Naylor's testimony that the supplement, I'll have you look again at the supplement to plan Exhibit 7, 8, which we've been looking at off and on, that the amount of compensation, it was not LTI related at all but rather an examination of these various factors. And that they considered, among other things, what had been waived and, you know, money's fungible, Your Honor, in terms of how you look at it.

The testimony, I think, is the waiver of Mr. Miller's was approximated somewhere in the 6.7 million dollar range. And if that's the math, then ultimately the addition between that and 8.3 is 1.6 million. And you can use any, sort of, variation of that theme but the fact of the matter is that, you know, he's certainly not getting -- you know, if you said he

should -- you know, if the appropriate thing to do would be to get back what he gave up and get a meaningful emergence bonus in this, sort of, 5.3 range or some number that had been set aside originally. Those numbers would have been much closer to twelve than the 8.3. So there's not -- I don't think it's accurate to suggest here that Mr. Miller is getting more than what had been contemplated, potentially, possibly at the beginning of the case.

I think it -- what has happened here is during the case he waived his compensation with no guarantee that he would get any of it back. And ultimately he got a payment that, if you look at the Watson Wyatt report at page 91 -- the same one we were looking at before, at the end of the day that report on -- if you look at 4563, that Bates stamp, he's getting something that is squarely in the middle of those ranges and the recommendations that Watson Wyatt made on 4564.

So, Your Honor, I think from the standpoint of looking at those, there was a very careful assessment made. There were a variety of factors testified to by both -- by both Mr. Naylor and Mr. Bubnovich. And there was -- and in Mr. Miller's declaration that went unchallenged, he wasn't crossed on any of that stuff. And ultimately, there is a report, uncontroverted, about what competitive practices might be inside a Chapter 11 case.

THE COURT: Again though, is there any -- anything in

the record indicating that in any other Chapter 11 case there's been anything comparable to seventy-three and a half million dollars paid to executives on emergence bonuses, leaving aside the top -- the top two individuals.

MR. BUTLER: Your Honor, there's nothing on the record on those numbers, no.

THE COURT: Okay.

MR. BUTLER: I mean, there's also -- I mean, just to say it there are also -- the question is, you know, how many records are there of twenty-six billion dollar companies in Chapter 11 that are actually operating and that actually operating and that actually continue to generate those revenues and are going to reorganize. And are going to, you know -- and believe -- and have set for the case of what the competitive needs were. I mean, you know --

THE COURT: Suffice it to say, there was no study done of any -- any operating companies in Chapter 11 and what emergence bonuses were paid?

MR. BUTLER: The only -- the only study that was done that I think touches any portion of that were the -- and you heard Mr. Bubnovich talk about them a bit was the retention payments, the retention programs that other companies had. Those payments were often paid at the end of the case or partly paid at the end of the case or during the case, quite apart from incentive comp, the retention bonuses. And there have

been retention bonuses paid in lots of cases. And there is -- there is, in the October 8th report, there are charts that indicate what those are and how this would line up in connection with those. Those, sort of, Chapter 11 cases that he -- that he cited at those times but I think he testified those were not nearly a perfect fit for these cases.

Your Honor I'd like to, if I can, move on to --

THE COURT: And what was the percentage of those?

MR. BUTLER: I need to move back and look at the -- the -- they were all in the small percentages, Your Honor. I think we actually -- that's Exhibit -- let me just think of the -- I think that -- I'm trying to remember, was it Exhibit 265? Let me just go and see if that's the right exhibit. Let's move further back in there. It should be in the -- like sixteen, seventeen, somewhere in there.

There were two -- there were two charts in the original report --

THE COURT: No, it's the one --

MR. BUTLER: Next two pages. It's 17 and 18. And 17 and 18, again, this is based -- this assessment is based on the eighty-seven million dollar aggregate and on the -- and on the -- and you see the fifteen peer groups, and based -- and these are based -- they compare to these retention programs. So -- and if you look at the examples on what Mr. Bubnovich testified to was, that the annual cost of this program was between

seventy-five and eighty-one percent if you looked at the annual cost and the aggregate cost and this company ranked in the seventy-ninth percentile of revenues and the sixty-seventh percentile of assets. And so he believed it fell within the range. That was his testimony looking at those particular debtors. And the fact is that the annualized numbers there would have to be adjusted downward, Your Honor, because it took -- those are based -- I believe his testimony was on eighteen months in Chapter 11 and in fact there were twenty-seven months. And so, ultimately, there would be a reduction. You would probably have to reduce each of those percentages by a third or so in terms of the annualized percentages to get to the accurate numbers. And that looked at the -- at that peer group that they put in place. And then on page 18 they looked at -- they looked at retention plans that they had in their database of 117 companies not -- no matter what the size is, and interesting statistics here is, while in terms of revenues and assets this company, as I would expect, is in the ninety-sixth plus percentile because it's one of the largest cases ever filed, that the annual cost actually, of this case, is relatively less. And the reason for that, I believe, in this case has to do with the fact that the relative -- when you compare it to other companies, smaller companies tend to use larger amounts of their asset size and revenue size to pay to executives. I know, I have myself been involved in companies

where there's been a much larger percentage paid to executives of the relative value. Remember even if the -- even in one of the earlier charts that we talked about this in evidence, Your Honor, when the AIP program -- when there was an additional billion dollars worth of value created, there was a couple of percentage points, I think two to four percent, that was paid to executives. And so the relative size as opposed to the absolute amounts, the relative sizes here fall within the ranges in these charts -- on both of these charts.

It's hard to argue with Your Honor that the absolute size of this is not larger than other companies when this case is the largest industrial case ever filed. I mean, I don't know how to -- I -- that's another one of the, sort of, inconvenient truths in the case. I can't defend against or advocate against, you know, or explain away the fact that we're largest company and therefore the absolute amount is larger than other companies or smaller. There's just no way --

MR. BUTLER: There's just no way -- there's no way to be able --

THE COURT: I just haven't seen anything like this before. I haven't seen it in cases I presided over which were large companies. I haven't seen it in cases down the hall. It just seems anomalous to me.

MR. BUTLER: Well, Your Honor, this case -- I think in some of the other cases you presided over you had retention

programs that I presume you've approved prior to the -- at least the Congress vote, maybe you haven't, I don't know. There are certainly -- the data would suggest that 120 of them got approved by somebody, so -- in the database. And in the prior chart on page 17, you see the larger comparable companies where there were, in the larger Chapter 11 cases, these were filed.

And, you know -- but, I mean, the data's not perfect. And I think, ultimately, you know, the question I think that's before Your Honor is even if Your Honor views this as unique, even if, you know, you have Mr. Naylor testifying his approach to this he thought was, in his view, not even bankruptcy for a novel approach.

The question is does it violate Section 1129 of the Bankruptcy Code when it has been developed over two and a half years by the company, negotiated with its plan investors, negotiated with its statuary committees, put out to vote, and eighty-one percent of the people vote in favor of the plan which includes these provisions?

You know, is there to be a blue pencil on any one element of a plan of reorganization is, I gather, the question that Your Honor needs to deal with. I recognize that. I mean, I can't answer that. But I go back to the fact, and I'll say it one more time and then move on, which is that the premise in this case from the beginning was that the total direct

compensation, the TDC, for executives in this case, needed to be maintained near or at market. And without paying any LTI or LTI equivalent in connection with the case, the fact is you're paying people a third, or half of that. And that violated one of the basic premises of the company operating, which is why the company went on record at the beginning of the case, not at the end, but at the beginning of the case, saying they thought this was an appropriate way of doing this. The company could have seeing as it was one of the old Act -- or rather, the old Code, the company could have come in with their retention program on top of other programs, could have done other things. It chose not to. It chose instead to tell its executives and tell the company that it would -- and its stakeholders -- that it would rely on trying to develop a competitive program.

THE COURT: But -- I mean, it's a given, but I should say it, that program was never up for approval. It was never before me for approval.

MR. BUTLER: Correct. It kept getting deferred, and ultimately -- and I thought the Court was in favor of this --

THE COURT: Absolutely.

THE COURT: Ultimately, the Court, I thought, was in favor of having this considered in the context of a plan of reorganization, included in a plan of reorganization, so Your Honor could evaluate the votes on the plan and evaluate the recoveries to stakeholders and all of the other factors that

Your Honor believed were relevant to the Court's consideration of this program.

That's exactly what the debtors did. And I don't -- I mean, while I think if executives were sitting up here, some of them would argue reliance to you. I'm not making that argument here. I think people are sophisticated. I think that they understand that it had not been approved. I think that it will -- I think it will negatively affect the company if this plan is not confirmed, you know.

And I think the company did exactly what people expected it to do in this Chapter 11 case, and I think what the Court expected it to do. It incorporated the work that had gone on for two and a half years into its plan of reorganization. It put sixty odd pages of disclosure about it. It sent it out for a vote. It got the vote it needed, and it is here -- you know, it's here dealing with objections raised, understandably, by two unions, who are, I think constitutionally opposed to executive compensation, frankly, who, you know, didn't -- neither of which voted to reject the plan. And that's where we find ourselves.

But I would obviously urge Your Honor, you know, if this is, you know -- the plan should not be blue lined when we went through, I think, the appropriate process and steps and obtained the votes we needed. And I think we can demonstrate compliance with 1129.

THE COURT: Is there anything in the record as to how in the literature on executive compensation one goes about valuing long term incentive plans that includes restricted stock and stock options?

MR. BUTLER: I don't know that there is any literature in the record.

THE COURT: I mean, I did not get any sense from Mr. Bubnovich's testimony that he applied any accepted methodology for valuing these things.

MR. BUTLER: No, I think -- I think --

THE COURT: He couldn't really tell me how he valued them. And he changed what he told me, I think, twice when I was questioning him and eventually gave me the answer I think he thought I wanted. But it seems to me there is a fundamental -- and this is why you don't do this in Chapter 11 until the end, there's a fundamental difference between stock and stock options and performance based cash, on the one hand, and cash, whether there's a time discount or not, on the other.

MR. BUTLER: Well, Your Honor, I think ultimately, I mean, I think the company believed when it developed this program that there -- as I said, and I think the record indicates -- there were a number of inherent performance based aspects to these cash awards. One, they're payable at the end in the context of a successful Chapter 11 case. And we all know, and at some point I'll touch briefly on, you know, what

the company had to jump through to actually make this happen. I've explained some of it already. And the company believed quite strongly that the time element here was highly a performance motivator, that trying to do this as quickly as possible was important to all parties in this case to maintain value. I don't think there's any question about the value that's been created in this Chapter 11 case.

THE COURT: I understand that. Usually, though, that's reflected primarily in the exit stock that you get. And, of course, you have the time incentive there, because the faster you get to an exit that has value attached to it, the more that stock is worth on a present value basis.

MR. BUTLER: Your Honor, this stock, just to say it, the stock being awarded here at emergence is not backward looking. It is forward looking, and it's intended to compensate professionals for the next eighteen months.

THE COURT: I understand --

MR. BUTLER: Not for anything that occurred in the Chapter 11 case.

THE COURT: I understand that. But I'm just focusing on traditional incentives in a Chapter 11 case and trying to explore whether in fact there's a basis for any sort of long term incentive for the period of the Chapter 11 case.

MR. BUTLER: Well, Your Honor, if you conclude that you're not --

THE COURT: Beyond just coming out and preserving your job and actually getting a cash award -- I mean, a stock award.

MR. BUTLER: Well, Your Honor, if you believe -- if you actually believe that, then you would have to believe that what Congress intended would be that there would be a class of employees who in Chapter 11, during the Chapter 11 case, would by congressional intent, be paid half of what they're otherwise entitled to.

THE COURT: Well, but again --

MR. BUTLER: And that's -- I mean, I don't think that can be the --

THE COURT: Generally speaking, and this is reflected by the change in 2005, the stock options are out of the money. And, generally speaking -- in fact I think this is almost a given -- you wouldn't issue new reorganized stock or dilute existing shareholders during a Chapter 11 case. So the idea of stock based performance -- I'm sorry, stock based long term incentive compensation just doesn't work in a Chapter 11 until the end, which is why leaving aside the emergence bonus aspect of it, I fully understood the committee's desire to have this at the end, because that's when you actually have the capital structure and you can figure out what the proper stock to award is. But, given that, I guess I would question your statement. I don't see where Congress anticipated people locking in value

based on an analogy to a target that doesn't work anymore in Chapter 11.

MR. BUTLER: Well, Your Honor --

THE COURT: I can understand if the company is at a competitive disadvantage and losing people. Although it's not applicable to this case, Congress basically made that, through very restrictive drafting, almost impossible to fix. But the idea of matching that type of long term performance I think raises some serious issues for a Chapter 11 case, because you don't have the type of aligned incentive, which is to maintain value or increase value, which you have through stock on emergence. You have an incentive just to get the case over with. I mean, I --

MR. BUTLER: Your Honor, that would suggest people are going to breach their fiduciary duties. And I just -- I don't think the Court can infer that.

THE COURT: Well, but it's an -- it just doesn't seem to be related to an appropriate measure for compensation in a Chapter 11 case. I just -- I understand that it may be appropriate and has been done frequently in the past, to reward people, and not just the senior people -- in fact sometimes the senior people get rewarded more than they deserve and the junior people don't get what they deserve -- but to reward people for taking on extra work and achieving a result that's, you know, perceived at the end of the case to have been

exceptional.

And I don't think you need to go through the record here orally. I think the record is clear that this company took on exceptional problems, and as a company led by its executives in the Chapter 11 case, handled those problems in an exemplary way. But the question I have is whether one would apply traditional means of rewarding executives for that exemplary performance, as opposed to a novel mean, which is to try to analogize their compensation structure in a Chapter 11 to what it would be outside of 11, particularly when the company's in a distressed environment. And, again, I've just never seen that before. And I think Mr. Bubnovich was candid. He said this was novel.

MR. BUTLER: Novel in lieu of, for example, retention programs.

THE COURT: Well, yes, that's right, novel in lieu of retention.

MR. BUTLER: And that's the point. I mean, I think that's the point. It's not that companies have not traditionally put in place programs that were designed to deliver, vehicles that were feasible in a Chapter 11 case, during the Chapter 11 case. And this is a pre-October 17, 2005 case, as Your Honor pointed out. We were perfectly entitled to go forward with those programs. There are -- the data right on the board -- 120 companies that had done it. And if you look

at how this program aligns with those, it aligns pretty well with those programs. But it's not a retention program.

And what the company tried to do, because the focus here from the compensation committee was to have a KECP as opposed to a KERP and trying to have a program that had incentives in it. And the company did believe, and the comp committee believed, and this is what the record says, is that the company did believe that there was an incentive, particularly in this kind of Chapter 11 case, to move the case forward as quickly as possible while still jumping through all the hurdles Your Honor's recognized the company jumped through.

And so I guess the real question is, when looking at, again, the Exhibit 95 for a second, if we go back and look at the -- I want to look at the pies at the end, if I can, which are -- I'm trying to find the exhibit number -- pages 73, 74, 72 -- it's really 72.

The real question, I gather, is that in terms of should a Chapter 11 debtor seek in a Chapter 11 case, when addressing executive compensation for its management team, you know, is it supposed to ignore the salmon part of the pie, the one third of the pie, or whatever it is, and not address that and say gee, you're just out of luck, and, you know, that's the way the cookie crumbles?

I think if the company had put out a release to its employees, to its executives, saying for the next, you know,

number of years while we're struggling through all these issues, we're going to, you know, by fiat, pay you only sixty percent of what your TDC is, your total compensation is, and that's it, you're not going to get anything else, I think the company would have had an unmitigated disaster on its hands. And I don't think any major company ever does that.

And so what the company tried to do, without coming to the Court and putting in place a retention program, which 120 other companies plus had done, and others in the peer group had done, the bankruptcy peer group that Mr. Bubnovich described in his October 8th report, what the company tried to do was fashion a program that would be linked to but discounted from the prior LTI opportunities. And the company believed that was a reasonable approach, Your Honor. And whether it's, you know, it's novel or not, I don't think makes it unreasonable when you look at this reality.

And I guess I'm very troubled by the prospect that we would conclude that this group of workers would by design out of the box only be willing to get two-thirds or less of their TDC. And as was evidenced by the debtors in 2005, before the debtors entered Chapter 11, you adjust -- and I think this is another important point -- you adjust delivery vehicles based on the circumstances. So in 2005 -- and we're criticized I said by not using 2005 -- but in 2005 the debtors went to a seventy percent cash based LTI program for 2005 -- that's what

the record indicates -- from what had been a seventy percent stock based program in 2004. And so seventy percent was cash driven in 2005. And what the company basically has done here is said that the appropriate vehicle in a Chapter 11 case is a hundred percent cash, not seventy percent cash or forty percent cash or thirty percent cash, but a hundred percent cash, but it should be discounted. And initially the debtors discounted it by twenty percent.

The testimony, again, I think unrebutted, is that the expectation of the debtors at the time they put the program together was it would be effectively discounted fifty percent, because we thought it would take eighteen months to get out, at a minimum. And at the end of the day it's been discounted by sixty-seven percent. And I just don't -- you know, when Your Honor thinks about that and thinks about the delivery mechanisms and looks at the pie, I just -- it's hard to understand why the Court would want to conclude that it's, you know, it's unreasonable for a company to adjust its delivery mechanisms as it had done pre-petition, to address changing circumstances in an effort to provide, you know, direct total compensation that is reasonable.

THE COURT: Was there any evidence in the record that this is done by other companies?

MR. BUTLER: Your Honor, I mean, this is a circular question. The evidence in the record is that other companies

do it by retention programs. That's the evidence in the record.

THE COURT: But retention programs are suspect even before BAPCPA.

MR. BUTLER: You know, post emergence, Your Honor, I mean, you know, I mean, going forward I think you're going to see more and more programs designed to address this issue. This isn't -- you know, and they're going to be broad based, because otherwise you won't get management managing companies.

THE COURT: Well --

MR. BUTLER: We don't have to deal with BAPCPA, because we're not there in this case.

THE COURT: I just don't -- if this had been brought on -- and I think I gave you all this message -- before me at a hearing at the beginning of the case, I never would have approved it. Now, maybe that's partly because of the dynamics in the union negotiations, but well --

MR. BUTLER: Should I move on, Your Honor?

THE COURT: Yes.

MR. BUTLER: With respect, Your Honor, to equivalence of sacrifice, just a couple of points. The objectors chose not to essentially take on Mr. Miller's testimony. And if you look at Exhibit 67 at paragraphs 46 and 47, he testified about equivalence of sacrifice and what, as executive chairman of the company, he believed it was intended and how it was construed

by the company throughout the cases, in paragraph 46. And in paragraph 47 he addressed a number of the sacrifices that were not made available.

And they run through first -- and I'll just run through some of these that are going through -- in his declaration he deals with the lack of the LTI portion or component of the program. Second, the elimination of the supplemental health, there's a two and a half million to three million dollars in guaranteed death benefits. The waiver of their base salaries, and that reduction -- the record's clear that reduction was now made permanent by the compensation committee -- and that they will have been paid below market median on a TDC basis, even if Your Honor approves the programs before the Court. That's Mr. Miller's testimony, again, uncontroverted.

The next item I'd like to point out to you, and you've already seen the testimony on the 257 million dollars in terms of the change in control claims. If you look at Exhibit 154, and this is another, I think, very important issue for Your Honor to consider in balancing all of these factors, and this is one that we raised in our papers and I think there hasn't, frankly, been given enough attention to, and that is that throughout this case the company needed to get to 1.45 billion dollars. That was what was negotiated ultimately.

And as you can see, and this is a presentation back

in January, but similar charts were provided to the committees virtually every month over a twelve month period, and the first of these charts was presented in November of 2000 -- I believe 2006. And you can see that on the original estimate in November 2006, the company estimates were that it was basically at 1.7 billion dollars at that point in time, assuming -- and that assumed it could be successful in a lot of various areas. There were a lot of questions whether the company could get down to the 1.7 billion, but included in that was the 257 million dollars for change in control. And, again, that goes all the way back to the November 8th estimates. That was eventually eliminated from the change in estimate, because one of the requirements of Section 7.8 of the plan is that all the executives have to waive that benefit. That's a 257 million dollar benefit to the estate.

THE COURT: Are there executives waiving that benefit that are not being employed post confirmation?

MR. BUTLER: No, Your Honor, the answer to that question I think probably is no. And the reason for that -- and the point is to go forward and get the new package, which includes these elements that are here before your Court today, this entire package. You have to give up the 257. And every executive's got a choice, right? And executives could say I don't want to work for you anymore and I'll take my claim in planned currency and I'll deal with it that way just like

everybody else is, and, you know, and go do something else someplace else for somebody else. And that's a decision every executive can make.

The agreement we have with the plan investors is, you know, while it's not codified in the confirmation order because, you know, these are human beings and you try to deal with things on a little less public basis, but there's a very clear expectation by the company that you -- to continue going forward, you will waive these agreements, because if you can't waive them, you don't get the new program, number one, and number two, the company's rejected all the prior programs. So there's essentially no way to compensate you, and therefore we expect the waivers will come as on an individual basis. But under the labor law, people have to make their own waivers. You can't force it on them.

And I just want to point out that another equivalence of sacrifice point here is this waiver which was demanded by the plan investors and by the company and which is absolutely necessary, and there's really uncontroverted evidence on this, we couldn't have gotten to the billion-450 cap without it. It was one of the drivers of this cap, of this arrangement.

On Exhibit 268 at page 7, two other things we talked about briefly before, but just to say the PAP for two of the cycles was cancelled and the cash retention program that had been part of the 2005 LTI, the twenty-one million dollar

program was cancelled, the last fourteen million dollars of that was cancelled as additional payments.

On Exhibit 2 in Section 7.8 at pages 1 and 2, you'll see here, and we've been over this before, the LTI going forward for bands A through F has been reduced from a hundred million to fifty million, roughly, approximate numbers, a fifty percent reduction. And then there was a further overall reduction to fifteen million dollars in the aggregate pool set forth, again, on Exhibit 2, Exhibit (sic) 7.8.

And then also in the next paragraph -- or in the same paragraph we talked about the supplemental life benefit program, which you've got uncontroverted testimony about the value of that for parties. So to suggest that the executives have not had to sacrifice in this case as they are brought into market or other of their programs are not renewed, I think the evidence doesn't suggest that at all. And I think it strongly supports these contributions, and I would again point out not a single bit of evidence to the contrary submitted by any objector.

So overall, Your Honor, at the end of the day, I think that the -- just in reviewing the points made here from the company's perspective very quickly, I think, Your Honor, that the process that the compensation committee used is almost unprecedented in its scope and care and the consideration they took to the issues they had to deal with.

You had the benefit of statutory committee involvement on elements of the program and compliance with 7.8 from a creditors' committee perspective, the requirements there. You had the oversight of the plan investors who have, in many respects, as much to gain or lose as anybody from having an appropriately incentivized management team going forward, making many modifications, but at the end of the day, signing off on the plan.

You have all of this in a plan of reorganization that has been overwhelmingly approved by creditors. You have nobody, even the objectors, having -- you know, who are objecting here -- having rejected the plan at the time they bring these forward. I think there is a very good record on peer group analysis and on SERP and the other matters. I think we've explained the key elements of the emergence equity award to you, and we certainly have vetted the Court's concerns on the cash emergence payments.

But at the end of the day, I'd just like Your Honor to focus on the fact that there does need to be a delivery vehicle to address the total direct compensation that an employee's entitled to get. And think of the -- consider the steps the company took in migrating towards a cash program pre-petition, and consider that the cash program that we're asking Your Honor to find not to be unreasonable and therefore deny confirmation of a plan under 1129, that we ask Your Honor to

conclude at the end of the day that the sixty-seven percent discount that has been taken here more than offsets whatever concerns the Court may have in absolute terms. And then finally, again, I think at the end of the day the testimony involving Mr. O'Neal and Mr. Miller's compensation and the decisions made by Mr. Naylor and the compensation committee and the expert reports they received are uncontroverted.

So at the end of the day, Your Honor, we believe that from an 1129 perspective that we have complied with 1129(a)(4) and (a)(5) and the other remaining provisions of 1129 as it relates to that. I would like, and Your Honor indicated that you didn't think it was necessary to review the other aspects of the plan, I would like at an appropriate time to come back up here and address certain elements of those for the record, particularly as it relates to the GM settlements and other matters that I think need to be part of the closing arguments.

THE COURT: Okay.

MR. BUTLER: Thank you, Your Honor.

THE COURT: Okay. Thanks.

MR. BUTLER: I also, obviously, Your Honor, would like the opportunity to briefly rebut any of the objectors.

THE COURT: Right. Okay. Mr. DeChiara?

MR. DECHIARA: Good morning, Your Honor, or should I say good afternoon? Peter DeChiara from the law firm of Cohen, Weiss and Simon for the United Auto Workers.

Your Honor, as much as any party to this case, the UAW would like to see Delphi out of bankruptcy. We have no objection to the plan or reorganization, apart from the management compensation plan. And we regret that we have to -- we have had to object to confirmation. But Delphi left us no choice with this management compensation plan. After all the sacrifice that our members have made to allow Delphi to reorganize, the UAW could not stand by and not protest a plan that would line the pockets of management with cash that should be reinvested into the company.

The UAW's objection is not about payback or retribution or trying to embarrass management or anyone else. It's about to trying to insure that everyone is sacrificing to help assure the long term success of this company.

The UAW's members have made their sacrifices. Our objection sets forth a list of deep and ongoing sacrifices in pay, benefits, jobs and job security that the UAW members have given and that they will live with for many years to come.

The exhibit on the screen, Joint Exhibit 95, demonstrative slide 16, which was prepared by the debtors, shows us a picture of the so-called labor transformation that made it possible for Delphi to reorganize. It shows where labor costs were pre-petition and how profoundly they have been reduced.

Courts have interpreted the good faith standard of

Section 1129(a)(3) as requiring that a plan of reorganization be fundamentally fair. Debtors bear the burden of proving that the plan of reorganization, including the management compensation plan, is fundamentally fair, including to the UAW representative workers. This is a burden they fail to meet.

Mr. Butler, in his opening statements, commented on the fact that we had no witnesses, we had no expert, we had no independent evidence. The fact is we didn't need any of that. This plan is so transparently unfair on its face that it fails to make a prima facie case of meeting Section 1129(a)(3). In the settlement agreement between the UAW and Delphi, made binding by order of this Court, Delphi management committed to sacrifice on pay and compensation in a manner equivalent to the sacrifice made by the UAW represented employees. The management compensation plan betrays this commitment.

What does the equivalence of sacrifice clause mean? The Court was exactly right on Friday when the Court said that the management compensation plan means what it plainly says. The dictionary defines sacrifice as giving up something of value. Arguably, what the equivalence of sacrifice clause would require would be to allow the company to put up a slide like this showing that management labor costs have been reduced in the same equivalent fashion. But at the very least it means that management should not have a compensation plan that makes them better off now than they were pre-petition, that is richer

even than the plan that Delphi itself proposed in October 2005 and that it argued then was reasonable, or that gives management new terms and conditions of employment superior even to what their own expert deems to be market median.

One thing the claim clause does not say is that management has satisfied its commitment to the UAW if the company's highly paid compensation consultant and its hand-picked compensation committee says that the plan overall is market. Delphi might have struck other deals with other parties that have terms like that. That is not in the equivalence of sacrifice clause with the UAW.

With that introduction, let me examine the various elements of the management compensation plan. First, the eighty-seven million dollars in cash that would vest upon emergence. What Delphi is seeking here is literally unprecedented. Mr. Bubnovich testified that he looked and could find no prior example of a cash emergence payout of this scope which would pay cash to hundreds of executives. Mr. Bubnovich testified that it was "less common than more common" that debtors pay cash emergence payments at all. He further testified that even when there are cash emergence awards, they are only for a handful of top officers.

A colleague of Mr. Bubnovich at Watson Wyatt wrote in an e-mail -- and this is Mr. Bubnovich's deposition, Exhibit 6 at 2, "You asked me to look for cash emergence data for large

recently emerged or emerging companies. Unfortunately, I have not found a single one of those. I don't know if it's the post-2005 rules or just the general way of the world, but the significant value in most of the execs deals are in the form of equity granted as part of the emergence."

THE COURT: Wasn't that responding to the top -- his inquiry about the top two?

MR. DECHIARA: No, Your Honor, I think this was in terms of the entire cash emergence program. We can call up the document, Your Honor. I don't have -- I don't have --

THE COURT: I just -- I don't recall it that way, because they weren't looking for support for the entire emergence program on that basis. He was focused on the compensation committee's focus on Mr. Miller and Mr. O'Neal at that point, I think.

MR. DECHIARA: Your Honor, the view that's expressed in the case law -- and here I cite Geneva Steel Co., 236 B.R. 770. In that case the debtor proposed an emergence payout for senior executives of half stock and half cash. The Court held that paying the "entire emergence bonus in stock is the better approach." In fact, in Geneva Steel, the CEO voluntarily agreed to take all stock.

Here, by contrast, far from willing to make a sacrifice, Mr. Miller testified before us that he wants all cash. Nor is there precedence for a cash payout of this scope

in Delphi's prior history. The pre-petition long term incentive plan only allowed for cash payments to approximately 100 executives, not the 561 that the management compensation plan would cover.

THE COURT: But what was the amount of that cash allocation?

MR. DECHIARA: Your Honor, I don't have that fig --

THE COURT: I mean, the testimony, I think, for 2004 is it was a third, so that's roughly thirty-five million dollars.

MR. DECHIARA: Your Honor, I don't have that figure about the amount of the cash.

THE COURT: Okay. But if for 2005 it was a third plus the twenty-one million, so it was roughly fifty million, I think.

MR. DECHIARA: Your Honor, I don't know that there are exhibits in the record that set that forth. I'm not familiar with them.

THE COURT: Well, okay, I'll ask Mr. Butler to point that out. I mean, I think Bubnovich testified that there was a third of 110 for 2004 was cash.

MR. DECHIARA: The cash payout does nothing to further the goals set forth in Delphi's own compensation philosophy. It doesn't serve to attract and retain high caliber executives. It doesn't link the executives' interests

with those of shareholders or align their interests with Delphi's long term strategic goals. It just puts a large wad of cash in the pockets of incumbent executives, many of whom will soon be leaving as Delphi shrinks in size after emergence.

Delphi says the cash payment is to make up for the absence of the long term incentive plan during the Chapter 11. But if what was lost, as Mr. Naylor insisted, was long term incentive opportunity -- as he put it "The operative word was opportunity" -- the company should compensate the executives, if at all, with another opportunity, not with cold hard cash.

Moreover, under the pre-petition plan, vesting was over five years. Meaning, if the plan had been in place during the Chapter 11, grants made, say, in January 2007 would have vested in January 2012. Under the cash payout, vesting is immediate upon emergence.

The pre-petition long term incentive plan also had performance targets. The cash payment, by contrast, has no performance element. The executive gets the payment so long as during the Chapter 11 case he didn't quit, he didn't get himself fired, and so long as he still has a pulse when Delphi emerges from bankruptcy.

On cross-examination, Mr. Naylor testified that he didn't know whether, had the pre-petition plan remained in place during the Chapter 11, the executives' performance would have satisfied the pre-petition plan's performance targets. So

as far as the chairman of the compensation committee who approved the MCP knows, the executives may have gotten little or nothing, even if the pre-petition long term incentive plan had remained in place. So how then could he conclude that the cash payments are a fair compensation?

In any event, the loss is unquantified. We saw the pie chart a few minutes ago, that the company had relied heavily on, that had the piece of the pie that shows competitive shortfall. That's the competitive shortfall that management allegedly suffered during the case as a result of not having the long term incentive plan in place.

That pie chart has no dollar value placed on it. And when Mr. Naylor was asked on cross-examination what the dollar value was, he gave no answer. He could give no answer. So how could eighty-seven million dollars be the proper amount of compensation, discounted or not discounted, for that supposed competitive shortfall when we don't know what the competitive shortfall was. The Court questioned Mr. --

THE COURT: Well, it's somewhere between sixty-one percent and zero of their compensation.

MR. DECHIARA: Right, Your Honor. Your Honor questioned Mr. Bubnovich on cross-examination about how he came up with the eighty-seven million dollar figure. And, Your Honor, frankly I struggled to understand what Mr. Bubnovich was saying, because I am fairly familiar with his record, I had sat

through and took part of his deposition, I had read his reports, and I had never heard this explanation. And as Your Honor just mentioned from the bench, he kept changing his answer.

But this is what I think I understood. The eighty-seven million dollars was based on what the executives received under the pre-petition long term incentive plan in 2004. But the 2004 payment was for pre-petition performance, not for performance during the Chapter 11 case. Again, how do we know the executives would have met any targets during the Chapter 11 case? From this record we don't.

THE COURT: Well, I think the company's response to that is that just as it set a reasonable target in 2004, it set a reasonable target for the post-petition, pre-confirmation period. You may disagree with whether the target was reasonable or not, but I think that's the response, is that each year has a reasonable target in it. Some years you hit them, some of the years you don't. But it's a reasonable target. You don't go with last year's target for this year.

MR. DECHIARA: I think that's exactly my point, Your Honor, that the company is essentially saying we should compensate the executives for the long term incentive opportunities they received in 2004. And my point is, but that was based on performance they made in 2004.

THE COURT: No, I don't think it's for what they

received. I think it was simply a discount based upon the aggregate amount that they could have received, the opportunity, in other words, the hundred million. They received less than that, although they did pretty well that year. But the opportunity is valued by him at hundred million. And then you then apply whatever your criteria for realizing on that opportunity.

MR. DECHIARA: Your Honor, let's focus on 2004, as the record shows, as between 2003, 2004, and 2005, in 2004 there was the highest payout --

THE COURT: Right.

MR. DECHIARA: -- the highest opportunity. My colleague, Mr. Kennedy, asked Mr. Bubnovich on cross-examination why 2004, other than that it was the year with the highest payout. And on cross-examination, Mr. Bubnovich could give no reason. The only fair conclusion is that 2004 was picked to maximize the executives' cash payout. That's anything but sacrifice.

And I think it's important to look at how else management faired during the Chapter 11 case, apart from the absence of the long term incentive plan. Of the approximately 560 executives to be covered by the management compensation plan, all received their full salaries and their full benefits during the Chapter 11 case, with the sole exception of those DSB members, and now we're talking about less than twenty

people out of 561, that even Watson Wyatt concluded had to have their base salaried reduced by ten percent to bring them in line with market.

The executives also received their AIP bonuses in every half year period during the Chapter 11 case. This was better than they did pre-petition. In 2001, 2003, and 2004, the executives received no AIP bonuses. The executives not only received their AIP bonuses during the case, but as Mr. Naylor put it, they did quite well. In the first half of 2006, the bonuses were 183 percent above target. In the first half of 2007, 176 percent above target. And this wasn't due to exceptional performance by the managers. Indeed, a member of Delphi's board wrote in an e-mail to Mr. Naylor that "The board was convinced to set too low of a financial target." And that's Naylor deposition, Exhibit 11. In other words, management got a windfall.

THE COURT: But wasn't he asking whether that -- he didn't say that, he was asking?

MR. DECHIARA: No, Your Honor, I think he asserted that as a fact. Perhaps we can look at the document. That's dep -- can you -- yeah, can you blow that up? Your Honor, in the middle there's a dash that says the quote "And it looks like the board was convinced to set too low of a financial target." That's an assertion by a member of the board, it's not a question.

And, Your Honor, let me just say something about these e-mails. Mr. Butler suggested that perhaps these e-mails are just a phenomenon of people being too quick to use their BlackBerrys. I would suggest that what these e-mails show is the real inner workings, the real raw thought and incentives and motivations that went behind this plan. It's what you see before it gets scrubbed by the lawyers and put into pretty PowerPoint pictures by the graphic artists. It's the real stuff. And that's why these e-mails -- we're not playing a game of gotcha with these e-mails. What we're trying to do is see what the real thinking was behind this plan.

In sum, management during the Chapter 11 case did not sacrifice on salary or benefits, did very well on bonuses, better even than pre-petition. And there's no evidence of the dollar value of any loss they suffered that would justify the eighty-seven million dollar cash emergence grant.

Now, let's focus on the proposed cash payments to the two top officers, Mr. Miller and Mr. O'Neal. Mr. Naylor admitted that in October 2005 the amount proposed for these two individuals was a total of eight million dollars, 5.3 for Mr. Miller and 2.7 for Mr. O'Neal. And that's Naylor Exhibit 18. Why don't you put on the screen? The compensation committee believed such payments would have been reasonable then. But now the MCP proposes 8.3 million --

THE COURT: But at that point Miller hadn't given --

he was not getting a dollar a year at that point.

MR. DECHIARA: At that point he was getting a salary.

THE COURT: Right.

MR. DECHIARA: Right. He was getting three-quarters of a million -- he testified that he earned three-quarters of a million dollars in salary.

THE COURT: So, I mean, shouldn't I take into account that -- I mean isn't this apples to oranges? The real bonus he's getting, if you factor in what the company negotiated as far as his salary and right to a short term incentive, is, like, a million dollars.

MR. DECHIARA: Your Honor, I don't follow how that is. He --

THE COURT: He gave up, like, 6.5 million dollars of salary and AIP.

MR. DECHIARA: Your Honor, in total, Mr. Miller, under the proposed management compensation plan will walk away with having received over twelve million dollars in cash.

THE COURT: I understand that. I'm just talking about this analysis compared to the actual bonus that's proposed. And I think -- isn't it inescapable that you have to take into account the fact that he was only paid a dollar for most of the case?

MR. DECHIARA: Your Honor, first he voluntarily waived that. And there's nothing in the record, and there's no

testimony in his declaration, that he waived that with the hope or expectation or reliance that he would receive it back. It was -- it was sacrifice. And that's what's called for here. But now to make that sacrifice disappear and to say oh, you know, I was waiving my salary --

THE COURT: No. But I think that's a different point. I think you're focusing on the sacrifice point there. I'm just trying to focus on what's the analysis of an appropriate emergence bonus for a senior executive.

MR. DECHIARA: Your Honor, I think the sacrifice point, at least as far as the UAW is concerned, and there may be no other parties in this case, that care about the equivalence of sacrifice clause. But for the UAW that is the core issue. That is the issue that matters to the members of the UAW, to the leadership of the UAW, and it is a requirement that was carefully negotiated and approved by this Court. And what we're trying to do, through this objection, is to make Delphi live up to that commitment.

The 8.3 million dollars for Mr. Miller and 5.3 million for Mr. O'Neal is a total of 13.6 million. So a whopping seventy percent above what was proposed for the two of them, in the 2005 plan. Mr. Miller, by his own testimony, has made millions and millions of dollars as the "turnaround kid rescuing America's most troubled companies." He testified that he had no expectation of receiving 8.3 million dollars. And he

hasn't relied in any way on receiving that amount. And I think that goes to Your Honor's waiver point. If he waived his salary, he waived his salary, and now is admirable sacrifice. But now to say well, we're going to give him a cash bonus that more than makes up for it, that eliminates the sacrifice. He's already received from Delphi three million dollar signing bonus and three quarters of a million dollars in salary. So if the MCP Is approved, for about two years of work, during which he also found the time to serve on the boards of two other companies and write a book, he will have received over twelve million dollars in cash -- in cash, from Delphi. How can that possibly be deemed -- whatever else, how can that possibly be deemed sacrifice.

As for Mr. O'Neal, under the proposed management compensation plan, he will receive nearly double what was proposed in October 2005. Sure his job title changed to CEO. But even so, can taking double the previously proposed payout be sacrificed? Especially when, as I'll discuss in a moment, he's getting an above median CEO salary going forward. The company says he waived his twenty percent of salary during -- he waived twenty percent of his salary during the Chapter 11 case. But the salaries of the top executives, including Mr. O'Neal, were already above market. That's Naylor deposition Exhibit 10, at page 5. Delphi was already paying Mr. O'Neal more than it should have been. Now, we know for certain that

the salary proposed for Mr. O'Neal, the new management compensation plan, is above median. Mr. Bubnovich explained in a 2007 e-mail, this is Naylor deposition Exhibit 14, that "the old peer group (with all the large companies) indicated a median CEO salary of almost 1.5 million. The revised peer group (median revenue of twenty-three billion) which is used in our plan investor report indicates a median salary of around 1.2 million. Delphi is now proposing to pay Mr. O'Neal a base salary of 1.5 million undisputedly above the 1.2 million dollar median.

In his deposition, at page 199, Mr. Naylor testified that Delphi couldn't afford to pay above median.

"Q. What about paying above median, are there any problems with that?

"A. Yeah, we didn't think we could afford it.

On the next page of his deposition transcript.

"Q. So are you saying that given this state of the auto industry, in general, it would not be in the long-term interest of Delphi to pay above median?

"A. It might not be in the short term interest. Because what this company needs to do is start earning a sustainable profit so that it can reinvest in technology and so on. And if you went above median, that would be less money you had to invest in the future. And we just didn't believe that that was necessary."

Well, one might say it's only 300,000 dollars. But by paying Mr. O'Neal 300,000 dollars above median and base salary, Delphi is actually taking on a far greater cost. Even at his minimum AIP bonus of 125 percent of base salary, his base salary plus bonus would be half a million dollars more if his salary were at median. And the cost mushrooms with his change of control severance payment. A base salary of 300,000 dollars above median with minimum bonus, would yield a severance payment over two million dollars more than if his base salary were at median. Under his proposed base salary, with a minimum bonus, Mr. O'Neal's change in control severance would be over ten million dollars. An amount he could potentially get on top of his proposed 5.3 million dollar cash emergence bonus. And that's not even to mention how his above median salary would cost the company in other ways. Such as the employer match or the defined contribution pension plan. The company does not and cannot deny any of this. Its response, Mr. O'Neal negotiated his salary of the plan investors. But Mr. Naylor plainly testified that following this negotiation the compensation committee approved the 1.5 million dollar salary. In other words, it approved an above median salary, which, according to Mr. Naylor's deposition testimony, the company couldn't afford. And, in any event, if Mr. O'Neal's salary represents the best deal he could negotiate, that's not sacrifice. That's getting the best deal

he could get.

Having focused on the top two, now let's look at how the rest of the executives would fare under the management compensation plan. First, let's talk about the vast majority that non-DSB members -- who constitute 540 of the 561. Mr. Naylor testified that, pre-petition, the total direct compensation of the non-DSB members was above market. Since then, they have received full salary and full benefits, and did well under the bonus program. In fact, according to Watson Wyatt, their AIP bonuses are now above market by about nineteen percent, that's Bubnovich declaration, Exhibit 5. We know that pre-petition management had a long-term incentive plan that said aside 6.5 percent of the company's equity, with equity grants vesting over five years. Under the management compensation plan, management would get more equity, eight percent, with grants vesting more quickly, over three years. So in terms of long-term incentive plans, management is better off. Even Watson Wyatt concluded that the non-DSB executives, under the management compensation plan would be above market, as indicated in Exhibit 5 to Mr. Bubnovich's declaration. So where is the sacrifice if it's not in salary, benefits, bonuses, or long-term incentive plan, it's nowhere, that's where it is, there's no sacrifice, there's no picture like the Exhibit 16 showing the union labor cost sacrifice.

Now, let's talk about the DSB. Mr. Bubnovich tells

us that they would not be above market under the management compensation plan. But what is this based on? Delphi's -- and I guess what I'm about to get to is something Mr. Butler chose not to discuss. But I think it's critical, a critical flaw in the company's case. Delphi's compensation philosophy, drafted by Mr. Bubnovich and adopted by the compensation committee, calls for benchmarking the DSB based on proxy data "as well as based on survey data." Mr. Bubnovich looked at the proxy data and the survey data for the DSB executives and the survey data showed the DSB executives were, in his words, substantially above market. And that's paragraph 14 to his supplemental declaration. In particular, according to a Watson Wyatt analyst who e-mailed Mr. Bubnovich in December 2007 -- and that's Bubnovich declaration Exhibit 7 -- "the survey data showed the DSB executives to be eighty-six percent above market, using only Watson Wyatt's surveys and 102 percent above market, using a weighted average of all survey sources." Given these results, what did Mr. Bubnovich choose to do? He chose to simply not use the survey data. When questioned by the Court as to why Mr. Bubnovich said -- as to why, Mr. Bubnovich said that if he used the survey data, the compensation committee would have to reduce the pay of the non-DSB executives by too much.

THE COURT: No. The DSB executives.

MR. DECHIARA: Thank you, You Honor, the DSB

executives. This was a remarkable response. It revealed the results oriented nature of Mr. Bubnovich's approach. The desired result was to justify a rich compensation package. If the data didn't fit that result, it was the data that had to be discarded. Mr. Bubnovich said he wasn't a slave to the data. I think that was a gross understatement. He didn't feel constrained by the data at all.

The other remarkable thing about Mr. Bubnovich's answer is that it reveals the double-standard that Delphi uses in approaching compensation matters for its executives versus for its hourly employees. If the company believes that the union workers are overpaid based on a compensation analysis, it merits an aggressive Section 1113/1114 litigation to slash those wages. If the data shows management is overpaid, well the data is no good. But was the survey data in any way improper? Of course not. Mr. Bubnovich used the survey data for the non-DSB executives. In other words, he used it for 540 of the 561 executives, covered by the management compensation plan. And as I already noted, the compensation philosophy document, drafted by Mr. Bubnovich and approved by the compensation committee, required the use of the survey data for the DSB executives. At least with the upper portion of the DSB, there was proxy data to rely on. There was no sufficient proxy data for the lower portion of the DSB because the proxy data only shows the pay of the top five highest paid executives

in the company. And the job titles of the lower DSB numbers do not typically appear in the top five. So with insufficient proxy data, did Mr. Bubnovich rely on a survey data? No. He testified that to gauge the market level of the DSB -- of the lower DSB, he extrapolated -- that was the word -- he extrapolated from the proxy data for the upper DSB. Well, "extrapolated" sounds impressive and technical, perhaps involving some sort of formula. But, in fact, what Mr. Bubnovich meant was that he just assumed the market level for the lower DSB was the same as what the proxy data showed was the market level for the upper DSB. The Court asked Mr. Bubnovich if such extrapolation was a standard technique and Mr. Bubnovich's response was only that he guessed, maybe it's been done before elsewhere.

Mr. Bubnovich also tried to explain, in paragraph 15 of his supplemental declaration, why he believed the survey data was not good for the lower DSB. He testified that he searched for and found limited proxy data on people with the same job titles as those in the lower DSB, say human resources vice president. And found the proxy data showed that these people were paid more than the people with the same job titles in the surveys. But by definition the people he found in the proxy data had to be among the top five highest paid executives in their company. So it's not surprising that the pay of the rare human resources vice president, who is in the top five

highest paid executives in her company, would be above the pay of the many more human resources vice presidents listed in the survey data who are not in the top five, like the lower DSB members themselves. In other words, the proxy data Mr. Bubnovich could find on the lower DSB executives was not a representative sample; it was a sample of the highest paid people with those job titles.

Okay. But what about the upper half of the DSB for whom theirs was proxy data. Is Mr. Bubnovich's analysis at least accurate there? The proxy data was drawn from an eighteen company peer group. Mr. Bubnovich admitted that Perlmeyer, a well-respected compensation consultant, came by the creditors' committee, criticized his peer group for including non-manufacturing companies. Mr. Bubnovich claimed that it wouldn't have made a material difference even if he had included manufacturing companies. But if that were true, why would Perlmeyer bother to criticize his approach? This is a Chapter 11 case. This is not an academic seminar. She must have believed that it mattered. In the peer group chart on page 33 of Mr. Bubnovich's report, his December 28, 2007 report, the only reason Mr. Bubnovich checked for including companies like Pepsi, Coke and others outside the auto parts industry is their revenue size. But each of these companies has revenues larger than Delphi. And Mr. Bubnovich admitted that some compensation on analysts also look at market

capitalization as a measure of firm size. He further admitted that the median market capitalization for the eighteen peer group companies substantially exceeded Delphi's. Perhaps most troubling to the UAW about the peer group is the double-standard it embodies. Mr. Miller explained that when Delphi compared hourly workers all in compensation to workers at other companies, those other companies were companies in the auto parts industry and are all smaller. So according to Delphi, when one looks at executive compensation, one looks at bigger more successful companies in healthy industries. And when one analyzes hourly worker compensation, on the other hand, the benchmark group one uses is exclusively smaller companies in the same troubled industry.

The last element of the management compensation plan I want to discuss is the eight percent of equity proposed to be set aside for management. There was no dispute that with the reorganized equity value of 7.8 billion dollars, the value of the equity set aside for management under the management compensation plan would be worth 624 million dollars. There's also no dispute that the October 2005 proposal for a ten percent equity set aside was only projected to be worth 400 million dollars, since at the time, Delphi was projecting a reorganized equity value of four billion dollars. How would management possibly be sacrificing if it got an equity set aside worth 224 million dollars more than what it proposed and

what it deemed reasonable in October 2005?

THE COURT: Is there anything in the record to contradict the evidence that Mr. Butler alluded to that accepted measurement for a set aside from management equity is at the median two or three points above eight percent?

MR. DECHIARA: Your Honor, our answer -- my answer to that is that one needs to look at the real value, not just the percentage.

THE COURT: No. But that wasn't my question. Does anyone do that?

MR. DECHIARA: Does anyone look at the real value?

THE COURT: Yeah.

MR. DECHIARA: Your Honor, I know of one case in which there is an equality of sacrifice clause and that's this case.

THE COURT: Well, what I'm going to ask you about now -- I was going to ask you about that later. There are a lot of opinions, including out of the second circuit, that talk about the equivalent sacrifice in connection with 1113. And they very clearly don't talk about a dollar for dollar comparison.

MR. DECHIARA: No, Your Honor --

THE COURT: They talk about people's rights, market forces, and the like. So I figure you have to tell me something than just a dollar for dollar comparison.

MR. DECHIARA: Your Honor, I'm not at all suggesting a dollar for dollar analysis. Clearly, hourly workers are paid much less and paid in a much different fashion than executives. So it would be impossible to do a dollar for dollar -- or be meaningless to do a dollar for dollar comparison. And the clause doesn't say it has to be equal sacrifice. It says equivalent sacrifice. And that could be interpreted in different ways. I think one reasonable interpretation is to show how the overall total cost of management's compensation has been reduced in a manner similar to how we saw in the slide deposition, Exhibit 16. Exactly as it's shown in the slide that we saw at the beginning. But at the very least, even if one doesn't accept that analysis, that interpretation, management can't be better off --

THE COURT: But again, the evidence -- and I'm not aware of anything contrary to that, which is why I asked you this, is that normally in these types of situations, both in and out of bankruptcy, the set aside for management (a)is done on a percentage basis; and (b)is above eight percent. So I'm just trying to figure out where's the -- I'm not following your argument then given those two factors.

MR. DECHIARA: Your Honor, my argument is that the equivalent of sacrifice requires a look at the real value.

THE COURT: But they will respond, I think quite cogently, that they're giving up two to three percent, or

proportionately twenty to twenty-five percent of what is normally given.

MR. DECHIARA: Your Honor, I'm not aware --

THE COURT: In terms of the stock set aside. No, I understand your point about vesting earlier and the like. That's a point going the other way. But just in terms of the percentage amount of post-reorganization equity, instead of getting ten to eleven percent, they're getting eight percent.

MR. DECHIARA: Your Honor, why this matters to the UAW is that the concessions made -- the sacrifices made by the union workers made it possible that there is a reorganized equity value of 7.8 billion dollars. The reason it was 400 -- I'm sorry. The reason it was four billion and now it's 7.8 billion is to a large extent, perhaps not entirely, but to a large extent, I don't think anyone would deny, attributable to the sacrifice of the hourly workers. So it's important to the union that the Court look at the actual value of what the management executives are getting under the equity set aside.

Let me take an example of sacrifice. An example of sacrifice is Delta Airlines. Delta Airlines is a company that was a debtor in this Court, this very Court, quite recently. It's a large sophisticated debtor. It had sophisticated counsel and advisors. It operates in a competitive industry and it cares about having -- being able to attract high quality, high caliber talent. But in its management

compensation plan, Delta assumed -- which assumed its reorganized equity value would be ten billion dollars, set aside 2.4 percent for 1200 executives. That's a total of 240 million dollars worth of stock, a fraction of what Delphi management seeks divided among twice as many executives. And by the way, Delta's executives received no AIP bonuses during the Chapter 11. And as we saw in a prior slide, their CEO took no cash.

So what explains the difference between Delta and Delphi? The difference is Delta management was willing to sacrifice and Delphi's management isn't, even though Delphi's management is bound by an equivalent of sacrifice clause in it's UAW settlement. So how does Delphi claim management sacrifice? Mr. Naylor has a short list, in paragraph 26 of his declaration, of examples what he claims were sacrifices by management. And I went through these examples with Mr. Naylor on cross-examination and he admitted that the items management gave up were all items that were above market or non-competitive. For example, the elimination of life insurance for the retired executives. And let me just say a word about that. We've seen the number thrown around that the executives gave up an average benefit of 2.5 to three million dollars, but that's the benefit their estate would get when they die. The value -- the cost of the insurance is what it would cost the executive to go out and replace it. And in the plan documents,

the executives are being given the opportunity to go and purchase a replacement plan. But there's nothing in the record that shows what the cost is of that. So what they lose, the difference is what it would cost them to replace it, not 2.5 million dollars.

And for the elimination of each of these non-competitive items, management is proposing adding many others. For example, the defined benefits SERP. It wasn't canceled; it was frozen. Or it's proposed to be frozen. But not only frozen, but improved. There's no dispute the vesting age will go down from sixty-two to fifty-five. The lifting of the 5,000 dollar per month cap, the latter which Mr. Bubnovich testified would cost forty-two million dollars alone. Delphi --

THE COURT: Do you dispute Mr. Butler's statement that the 5,000 dollar cap was imposed simply for the duration of the Chapter 11 case to deal with priority issue in the first day motion and was never intended to continue?

MR. DECHIARA: I'm not in a position to dispute that, Your Honor, but by lifting the cap now is not an example of sacrifice.

THE COURT: Okay.

MR. DECHIARA: Delphi is even proposing to compensate certain DSB members with eleven million dollars worth of restricted stock as compensation of the freezing of the DB SERP. And Mr. Naylor admitted on cross-examination that the

unionized workers got no compensation for the freezing of their defined benefit plan.

Another improvement is the term in the proposed new employment agreement that would provide for accelerated vesting of equity upon involuntary termination. Management clearly wanted this provision, especially in light of the anticipated reduction in management ranks that Delphi would shortly experience. Mr. Naylor was unable to testify that such a provision was market competitive. Indeed, in an e-mail, Mr. Bubnovich -- this is Bubnovich deposition Exhibit 39 -- referred to this provision as "something special" from management, indicating that accelerated vesting is not achievable "solely by reference to competitive data." And what's most interesting about this e-mail is what it reveals about Mr. Bubnovich's view of what management may legitimately seek in a management compensation plan. In the e-mail, Bubnovich advised a top management executive that constituents in Chapter 11 "pursue only and aggressively their own interests." And that there's "nothing wrong or untoward if management puts its foot down" and insists upon the accelerated vesting provision. This view, that there's nothing wrong with management aggressively pursuing its own interest, could not be more at odds with the equivalent of sacrifice provision.

Now, why does it matter what Mr. Bubnovich thinks? Because by his own testimony, he is the "architect" of this

management compensation plan. It's his views that pervade the design of this plan. So why would Watson Wyatt, the so-called independent experts, advance management's interest, going so far to discard survey data to propose an unprecedented cash payout? Because Watson Wyatt is anything but independent. How could it be? Delphi is a multi-million dollar client of Watson Wyatt's. The management compensation consulting services are but a small piece of the twelve million dollars that Delphi has paid to Watson Wyatt since the Chapter 11 filing. Watson Wyatt's business with Delphi is terminable at will, according to Mr. Bubnovich, either by Delphi's board, which is headed by Mr. Miller and Mr. O'Neal, or Delphi's management, which is now headed by Mr. O'Neal. To keep that large chunk of business, Watson Wyatt has every incentive to keep Delphi management happy.

Now, I don't mean to suggest that Watson Wyatt is alone in having this type of conflict of interest. It's a systemic problem among compensation consultants that has been repeatedly criticized in the media, by academics, and it's now caught the attention of Congress. But it's a conflict of interest that this Court should not ignore and that colors the entire case.

Now, I also don't want to make too much of Mr. Bubnovich asking Mr. Miller for a reference while at the same time evaluating Mr. Miller's compensation. But how could

someone who considers himself independent ask for and accept that kind of a favor? Could someone imagine a judge perhaps thinking of leaving the bench at some time in the near future asking one of the parties in a pending case to serve as a job reference?

Let's discuss Mr. Naylor, as chair of the compensation committee. Mr. Naylor testified he's no compensation expert. So what he did as chair -- so what did he as chair of the compensation committee rely on to evaluate the management compensation plan? Mr. Naylor spent his thirty plus business career as a business executive in a large corporation. Given his professional history, how could he help but identify and sympathize with the very individuals for whom he was supposed to serve as an outside check? But he was not only a business executive; he was an executive at DuPont, a supplier to Delphi, and knew Mr. O'Neal and others from that time. So he was reviewing the pay of people who were part of the same clubby network of business connections in which he spent his entire career. But more to the point is that he and the others on the compensation committee relied heavily and exclusively on Watson Wyatt, even though tens of millions, hundreds of millions of dollars are at stake in this management compensation plan and even though Mr. Naylor testified that experts can and do disagree. And as Mr. Butler said this morning, that compensation is more of an art than a science.

The compensation never even sought a second opinion. Bubnovich was their man and now it's upon Bubnovich's word. The same man who changed his answers twice when he was answering the Court's questions on Friday. It's on Mr. Bubnovich's word that Delphi asked this Court to approve the management compensation plan. There are no expectation or reliance interests that justify approving the cash or other elements of this plan. The management compensation plan has always been subject to Court approval and there is no dispute that the executives were told this. And Mr. Butler, I think, wisely said today that he's not arguing reliance. There's no argument that there's heightened attrition, that we need a rich compensation plan to keep people from quitting. In fact, Delphi had the opposite problem, it's soon going to have too many executives on its hand and it's going to need to get rid of some of them.

Finally, the implementation of the management compensation plan would not only be unfair but also harmful. It would be destructive to employee morale and to labor relations. Delphi's betrayal of its equivalence of sacrifice pledge will anger and demoralize the very workers on whose skills and efforts Delphi's success ultimately depends. Mr. Butler mentioned just in time delivery. Delphi needs motivated workers to be able to make precision products and meet that just in time delivery system. This management compensation

plan has the potential to further strain an already tense labor relations climate between Delphi and the UAW. United Airlines is a cautionary tale. There, the oversized management compensation plan caused United's unions to unite in protest and demand pay increases.

Let me end on this note. Anyone who reads the business pages knows that the top pay -- that the pay of top management in America, particularly CEOs, has reached dizzying heights in recent years. So far beyond any reasonable multiple of the pay of hourly workers that it's become a significant social economic and increasingly political issue. The scandalous amounts paid to top corporate management in America today is an issue beyond this case and this Court. But this Court does have the power to make things right in this case. To enforce a binding commitment made by Delphi to the UAW. We ask the Court to consider what is at stake. Letting Mr. Miller walk off with 8.3 million dollars in cash, letting management pocket another 7.8 million, letting management get all the expensive goodies built into this plan by an architect who sees nothing wrong with management aggressively pursuing it's interest, all this at a time when the company needs cash to succeed post-bankruptcy when, according to the chair of its compensation committee, it can't afford to pay above market. The management compensation plan is fundamentally unfair to the working men and women whose sacrifice made this reorganization

possible. The objection should be sustained.

THE COURT: Mr. Kennedy?

MR. KENNEDY: Do you want me to proceed directly, Your Honor?

THE COURT: Sure.

MR. KENNEDY: Good morning or rather afternoon, Your Honor. For the record, Tom Kennedy representing the IUE-CWA. Many of the points I would wish to make in closing have been made by my colleague I thought very effectively and I will therefore try to limit our remarks to points that I think would assist the court in making its ultimate determination. Since October 13, 2005, this case has been labeled a labor transformation case and so it is that. For the IUE-CWA alone, 7,000 well paying union jobs with a defined benefit pension plan and good health care have been lost. There have been soft landings for those members as a result of the negotiations but as we sit here today, in January of 2008, those individuals, for the most part, are no longer employed at anything like the wages and benefits they had previously enjoyed. Communities throughout the Midwest have been deeply impacted, families devastated, and all in the name of achieving what market survey has showed was a market level wage for the production of Delphi's auto parts. It would be impossible to emphasize how often publicly, privately, in our meetings and our negotiations, Delphi insisted that its wage survey showed our

members' wages were above average in the auto part industry. And so we believed and so we told our members and so they believed and so they voted to approve the contract that resulted in the loss of those jobs and reduction in their wages. And now, of course, we consider the other end of the spectrum setting management's compensation. And there we find, as Mr. DeChiara pointed out, repeated elements that not only ignore the notion of finding a market median but even where there is an allegation of market comparison, a definition of market that is so broad as to render the concept meaningless.

In our view and from our research and I think from the testimony, there are three elements of this plan that are unique in bankruptcy jurisprudence that even the company does not defend as consistent with Chapter 11 precedent. First, of course, is the cash emergence plan. The second is the treatment of the SERP which has not only been continued but substantially improved. And the third, our other monetary items I'll describe in a moment, that are equally made available to management. If we were to look at the elements of the total direct compensation, salary, short-term incentive plan and long-term incentive plan, their -- the IUE-CWA does not oppose the notion of executive compensation. We're aware that these are the typical elements of an executive compensation plan. We simply suggest to this Court that the fundamental fairness under 1129(a)(3) that you're entitled to

utilize in weighing this plan, requires that the debtor demonstrate that those elements are at a market median. And that is defined as not a collection of companies they could find that they would like to compare themselves to but a market representative of the industry in which they operate.

And we do not regard that approach as one which is a function of expert testimony. Mr. Butler pointed out on a number of occasions that the unions have not called their own expert witness. In our view, neither has the company. In our view, Mr. Bubnovich may be knowledgeable about compensation but he is far short of an independent expert. And I would point the Court to the standards established in the second Dana compensation opinion on this question of the market comparison. Three of them refer to whether the plan and proposal is consistent with industry standards. The next one is what is available, what is generally applicable, in a particular industry? Those two demonstrate that the appropriate analysis for a Chapter 11 Court is restricted to the industry in which the debtor operates.

We've also cited in our brief Internal Revenue Code standards which are similar. For compensation to be deductible, it has to be established as reasonable not in the abstract, not in comparison to what American executives, but in comparison to the industry in which the executive operates.

Now why is that important here? Because we have the

advantage of Delphi having done that comparison. There is a survey data which was reviewed by Watson Wyatt in 2005, which included a specific comparison to companies in the automobile parts and accessories industries. That's Exhibit 8 to the Bubnovich deposition, pages 12 to 32. They go through a series of executive analysis which is similar to executives at Delphi demonstrating what the survey shows would be paid. There is a temptation based on Bubnovich's testimony to look at the number in the aggregate. Yes, it's eight-six percent or 102 percent. I believe under Watson Wyatt, it was 147 percent. Those are aggregate numbers and extraordinary ones, really, when you consider them. But for the purpose of establishing this plan, the Watson Wyatt figures are actually position by position and it is the debtors' responsibility to establish a basis for going beyond what the debtors' themselves have demonstrated constituted market compensation on those three points: the salary, short-term and long-term for those individual positions. They have utterly failed to establish a basis for going beyond what they themselves have established as market compensation in the automobile industry. The last Dana 2 standard is, quote, did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation? Mr. Butler repeated frequently during his presentation how involved, lengthy and full of colored charts the process was for the compensation committee making

its determination. But at the end of the day, the process rests on the validity of the information given to the decision makers; garbage in, garbage out.

In this particular instance, the committee relied entirely upon the assistance of Mr. Bubnovich. Mr. Bubnovich, in turn, was in, our view, not an independent counsel. He was not an independent expert. He had drunk the Kool-Aid in a big way in terms of working with these executives and his e-mail chain, though I gather from Mr. Butler's remarks, he regarded it as inflammatory, perhaps even unfair.

We don't think so. That e-mail chain showed a gentleman who was working not with the compensation committee to determine what management should be paid, but with management to determine what the compensation committee should come out with. There's a reason; there's a separate criteria under Dana 2 for independent counsel. It's no more than Lord Acton once advised, power corrupts. And the power to set your own salary is one that inevitably will be abused and that is essentially in our view what happened here. And if you look at the reports, it is completely consistent with an individual that made a determination of, first, what management wanted, second, how we could bring it about and, third, even included one item that he said no to, namely, the life insurance provision that we think again Mr. Butler has deeply exaggerated by suggesting it's two and a half million a piece. That's not

the present value of that benefit. But by including one in which he had said no, in our view, he was doing that intentionally to legitimize all of the other areas in which he had said yes. And that simply doesn't meet the Dana 2 standards of independent counsel.

There are particular areas that we had wanted to address and suggest to the court are inappropriate. Obviously, the first one is the emergence cash grant. Of course, there are no prior examples, the witness admitted it's a back end KERP; it's certainly not tied to emergence values. I thought of interest in that discussion was the e-mail which he suggested to the company, should we tie the emergence cash to emergence values or should we wait for the UCC to suggest this. Well, I guess they made the right choice. They waited and the UCC never suggested it and therefore they never included it. But the analysis was not that of an independent expert deciding what would sensibly be part of a compensation scheme for a company this large. It was, what can we get away with, how can we game the system, why should we play this card now, let's keep it back. Remember, everything is negotiable in a Chapter 11.

The emergence cash grant, the evidence shows, was intended to replace lost LTIP opportunities. Well, there are three comments on that I want to make. The first is, as Your Honor's questioning demonstrated, this was a jury-rigged,

let's-figure-out-something-to-get-money-to-the-guys proposal. There was no methodology here. There was no reason it was eighty percent, or seventy percent or ninety percent. They just selected eighty as a results driven analysis of how to get to the number they wanted. There was no reason they selected 2004 except for the fact that it was the highest number. The emergence cash simply does not have a methodology that they could support and it doesn't have a substantive reason either because the LTIP opportunities for the most part, the majority of it, was stock which would have been worthless. Those were stock options that the record demonstrated had no value. They were certainly not capable of being issued during the Chapter 11. There was no long-term incentive lost in that sense. And Mr. Butler pointed out in his remarks that he didn't know why the unions were emphasizing the AIP. Well, we were emphasizing it, at least I was emphasizing it, for two reasons. First is we think it showed the company gaming the system. That AIP paid off a very high percentage. I think it was 187 in one of the periods, somewhere of 176 maybe in another and that suggests to us that this whole compensation program was infused with efforts to increase cash to executives. But even assuming it had not been gamed, the second part is that if you simply compare a Delphi executive in the two years, '04 and '05, to the two years, '06 and '07, they did better in '06 and '07 then they had done before. They got 104 million in AIP. The AIP in

the two prior years had been zero. So that if you looked at pie chart which wasn't a collection of their anonymous opportunities but was instead an analysis of what they got paid, they did better in the bankruptcy.

THE COURT: But did they have a better year as a company?

MR. KENNEDY: Yes, they did, Your Honor, because we accepted less in the way of wages and it made -- it drove the company more effectively.

THE COURT: But how's -- there's nothing specific on that, is there?

MR. KENNEDY: The only thing specific is the zeros in the years before 2006 and then 104 million in '06 and '07.

THE COURT: Okay.

MR. KENNEDY: I don't know what the targets were in '05 and '06, perhaps they were targets that weren't -- in fact I know they weren't targets that Mr. Bubnovich had anything to do with which might have had some impact on whether they were paid off or not. The compensation committee was obviously of a different composition, I believe. Mr. Naylor, I believe, had joined the committee in February of '05. So, frankly, I don't know why they paid off zero then. The company could argue we were doing great that's why we paid off more. Maybe that's so, maybe that's so; I certainly can't say that it isn't. I can say that if we're looking for the purpose of legitimizing the

emergence cash grant on money lost, if you do better in the two years than you had in the prior two, it substantially weakens the argument that there was a loss that needs to be addressed with a further cash payoff.

One of the -- the next topic I want to address is really the SERP. The SERP is obviously a unqualified, unfunded plan. And could we bring up the Exhibit 2, page 21 of the Bubnovich declaration? What about the next page? Yeah. This report on the defined benefit SERP to me is shocking in a particular way. Moving a vesting age to fifty-five is an event that has costs in pension funds, significant costs. Adding a five year certain annuity, the item on the bottom, is an event that has costs and significant costs. Mr. Bubnovich testified that the total cost for these amendments was 87 million dollars, and yet despite the reams, and we are talking about reams of paper that was produced by Delphi as its plan, nowhere in that plan does it reflect the cost of these improvements. Now, that can hardly be because they forgot to include it. In our view, it had to have been intentional in effort to avoid drawing attention to the double extraordinary nature of this SERP. It should have been eliminated and it should never have been improved. There is no precedent for improving a SERP prior to its freezing and the e-mails that we read from their chief pension actuary, mentioning that the Delphi executive who's in charge of pensions agreed with him, indicated that

most often the SERP benefits are lost rather than improved.

THE COURT: But the company says, I think with some credibility here, that the claims if you terminated this SERP, i.e., you didn't continue on with a modified DC SERP would have offset that amount and more.

MR. KENNEDY: Well, the claims are obviously payable in claim dollars and this is going to be paid in real time dollars and that's a present value number which over time will be a multiple of that number whereas the payment as a claim is a one time number. I don't think those are apples and apples.

THE COURT: But I guess I -- you know, in a case where the company is reorganizing and I think it is undisputed that competitively their competitors would have a SERP and you have substantial claims for terminating it that -- leaving aside the improvement point, it wouldn't seem to me to be reasonable to terminate. I don't see why you would do that.

MR. KENNEDY: Well, we think the drain on the estate of maintaining the SERP is higher and greater than terminating it and dealing with this as a claims process. For instance, if you were to say to the plan investors, yes, we have a 1.4 billion dollar cap on claims, but would you rather pay before we go and cross to the SERP or stretch the cap 100 million to encompass the claims --

THE COURT: Well, didn't they --

MR. KENNEDY: -- I'm guessing they would go for that.

THE COURT: -- didn't they have that choice? I mean it seems to me that they're looking to have management that they want to keep and attract and this is one way to do it.

MR. KENNEDY: But, Your Honor, the flaw in your argument is that they will have a SERP, we're not suggesting they won't have a SERP, they're going to have a defined contribution SERP going forward. We're now talking about the freezing and maintenance of the existing defined contribution -- defined benefit SERP -- the defined benefit SERP and the whole notion of performance going forward, compensation going forward, being paid in '08, '09 and '10, that is going to be under the defined contribution. There's no retentive effect to the continuation of the defined benefit SERP. And for the comparison purposes, the pie charts, the pie chart for the SERP quality is a generally, I believe in most large companies certainly going to be in this one, a defined contribution plan not a defined benefit plan.

THE COURT: Okay.

MR. KENNEDY: I wanted to address the long-term incentive performance equity. In response to your questions to Mr. DeChiara, let me acknowledge that the non Chapter 11 universe that we are aware of suggests a higher than eight percent overhang for companies of similar size. That's a fair comment and a truth. But there are a couple of points in connection with the LTIP equity that warrant not only that

being below for Delphi but for being further below the benchmark than the eight percent that's been proposed. The first is that going into the Chapter 11 the LTIP program was 6.5 percent, not eight, not nine, not ten, not more. Second is we've, as Mr. DeChiara pointed out, the October 2005 iteration of this program assumed a 400 million dollar value to the shares that would be allocated to management. At the 7.8 billion dollar plan value, if we were using 400 million as a standard, that's 5.5 percent. 6.5 percent, a continuation of the prior percentage, would still yield substantially more than the 400 million that was originally set forth in the October '05 proposal.

And the third point is that, as originally set forth, the division between restricted stock units and options was one-third RSU, two-thirds options. It's now been restated as half RSUs and half options so that the award, the three percent award which is being done on emergence, is now much more valuable to management. RSUs are two and a half times as valuable, Mr. Bubnovich testified in his deposition, which is in the record, than options are assuming at forty percent Black-Scholes standard which is what he thought was appropriate. So that a movement, and I don't have the number as a result of this arithmetic, but the movement from one-third to one-half RSUs versus regular stock is a multi tens of millions of dollars in our view adjustment to the equity that

they have not demonstrated a basis for imposing.

The next point I wanted to address is the 11.5 million in restricted stock options which are being provided to management that arise from the elimination of the SERP. The elimination of the SERP in our view, does not give rise -- it may give rise to claims, that's true, but it doesn't give rise to the right of managers or executives to obtain additional stock. And they did that by comparing -- all right, let's assume Joe works another ten years and Joe now is going to be half of the time under the defined benefit SERP and half the time under defined contribution SERP and make some assumptions about he earns and what his ultimate dollar take is from the combination of those plans, and he's going to be getting less because it's a defined contribution model instead of a defined benefit. Okay. I wouldn't care to estimate the amount of money the workers are no longer going to be receiving as a result of their pension changing from a defined pension plan to a defined contribution plan which is what has happened. And they have not been compensated for that change in plans. You can graph out what's going to be the take they get in tens years or twelve years or whenever they retire; it's going to be a big gap and times a lot of people it would be a lot of money. We didn't suggest to the company that it was necessary for the employees to be made whole for that change, it's a necessary and inevitable consequence of changing from a defined benefit

to a defined contribution. For the managers, however, that necessary and inevitable consequence of the change is one they feel they need to address and pay so that we have 11.5 million in restricted stock units being paid to blunt the impact of the change to the defined composition -- the defined compensation SERP which we think is inappropriate and we oppose.

There's also -- the next point I want to address, Your Honor, is the -- it's not included with a number of the other points, but it's obvious from reading the final report in December of '07 that there's an additional four million dollars in cash which is being awarded to executives to compensate them for the reduction in salary, the ten percent reduction that they took as part of the effort to show some participation in the reductions. We think that's completely inappropriate. It's a burden on the estate; it's not insignificant. The ten percent reductions only brought them to market. Many of them were more than market anyway. So the idea that cash is being taken from the estate to compensate the executives to bring their salaries more in line with market, we think is wrong. Now --

THE COURT: I'm sorry. You're saying that's part of the 87 million or a separate item?

MR. KENNEDY: You know I don't know, Your Honor. I was unable to tell. Perhaps Mr. Butler knows. I know it's referred to at Page 13 of Exhibit 2 to the Bubnovich deposition

which is at 265. And I have it here. It says the amount of the shortfall between the proposed LTI equity opportunities and median opportunities plus the amount of the permanent reduction in salaries, as well as certain downward adjustments, were estimated at four million. This shortfall was the basis for the committee to adjust upward the LTI opportunities to certain DSV executives so that it may be encompassed in the LTI cost.

Finally, the money to Miller and O'Neal -- I think it's important, interestingly enough, although I share everything Mr. DeChiara said in connection with those awards, that they not be the focus of this proceeding or this case. This, in our view, is not a case where the appropriate response by the Court is to, for a symbolic way, take down the composition of some of the leaders to generally demonstrate that things have to be fair and suggesting that there's a limit and all sorts of other reasons one might do that. We think there are systemic problems with this compensation system. It is not an effort to achieve an industry market. The cash that they're receiving, in our view, is reflective of the problems with the system as a whole. But it would be an insufficient response, in our view, to concentrate on them as a vehicle for solving that problem. They're not. The -- in our view, they should receive collectively what they were anticipated they would receive in October of 2005. That's some eight million to be split how ever they -- wherever they want. We don't think

there's a basis for increasing it, that's obviously a business judgment issue. We leave that to the Court to determine its fairness. But it certainly is not the place where fairness could be achieved by focusing on those particular pieces of compensation.

So we think the presentation as a whole recognizing that it's the company's burden to demonstrate that this system meets fundamental fairness -- and I speak here not only on behalf of the international IUE, Your Honor, which did vote in favor of this plan. We have lots of reasons to want to be out of bankruptcy. I also speak on behalf of a number of affiliated IUE local unions that voted against it. So there's no confusion about whether the IUE was an enthusiast for this plan. We were not and our local unions opposed it. The company's witness described important parts of this case as a novel approach you don't see very often that makes some sense. Boy, that's faint praise for the transfer of millions of dollars to executives.

The opening remarks by Mr. Butler have pointed out the need to avoid hyperbole and to reflect the inconvenient truths. And his repetition of the phrase "inconvenient truth", in our view, was part of an effort to convince the Court that although it may be politically unpopular, this is really a program that has met market tests, is consistent with something or another and therefore ought to be approved even though it

might look bad if you were viewing it from the point of view of a local union meeting. And I don't think that's the case in this plan. There is an inconvenient truth here. The inconvenient truth here is that the company lacks independent expert. They lack evidence of market value. They ignored the surveys that demonstrated what the compensation should have been. They've placed cash in the hands through this emergence bonus of executives that lost nothing that are entitled to nothing more than they're already getting. And the inconvenient truth, in our view, is that the company has to have a blue pencil applied to this plan.

The Court, in our view, should use its discretion to indicate that yes, it will approve the plan of reorganization but only upon substantial change in the management compensation portion and that the company has to recognize that given the sacrifices of all the constituents in this case, a market-based compensation plan is not only fair and just but the only one that's appropriate.

THE COURT: Okay.

MR. KENNEDY: Thank you.

THE COURT: Yeah? Just briefly.

MR. BUTLER: Your Honor, just so the record's clear on Mr. Kennedy's last -- one of his last points. Page -- if you go to Exhibit 90, page 13, that's where the reference to this four million dollars. And it's in the middle part of the

report. And there was an adjustment made by the compensation committee to certain LTI opportunities for three or four executives at the recommendation of the CEO of the company. And that's the explanation of it right there. And there was an upward adjustment of which the aggregate total of four million dollars. There was not any reimbursement of lost salary to the DSB members or anything of the sort. There was a four million dollar amount that based on the calculation that Concurry (ph) did, they decided to reallocate to, I say, three or four executives. I think it was responsibilities changed during the course of the Chapter 11 case.

THE COURT: Do you -- if you know how much of it was attributable to permanent reduction in salaries?

MR. BUTLER: I don't know how much -- I have no idea was attributable to the aggregate amount of salaries but the point was that it still remained. After making this adjustments, the TDC was still below the peer group TDC. This was intended to adjust the peer group, the opportunities for, I think, three or four executives. So it was not in any way an adjustment. And the report indicates that and it's disclosed in the final reports so there's no -- there was no secret about this. It was laid out plainly in the final report as part of the LTI. It has nothing to do with the cash for other programs.

I just have a couple of items that I wanted to

address which was, first, in Mr. DeChiara's presentation arguing both equivalence of sacrifice and 1129(a)(3). Mr. DeChiara -- and in the papers filed by the unions, the suggestion is that there can't be any evidence of sacrifice or the Court ought to disregard everything that occurs by the company and with respect to executive compensation, unless we can prove that the end result is below market, the sacrifice is an equivalent of below market. And that I just don't think that's an appropriate formulation of this. It's certainly not what I think equivalence of sacrifice is either in the second circuit or was in the MOU agreement which just factually, as the record indicates, was not negotiated in the MOU but was carried over from the 2003 agreement. With respect to the -- and there were a lot of -- just inconsistencies in the argument that at one point, the argument was that if you negotiated, it can't be equivalence of sacrifice. And I know the unions believe that they sacrificed and they negotiated all the MOUs to the result that it ultimately got backstopped by General Motors in this case. But it's hard to understand how, on the one hand, as it relates to them moving from out of market towards market and negotiating that with soft landings, which I acknowledged they believe and I think was painful and a difficult exercise under the standards that they would impose on management, none of those would be counted. Because if you take their words and apply them, none of them would be counted

and I don't think that's what they ultimately mean and I don't think that's how the court should think of this.

I also want to point out, Your Honor, in terms of the second opinion issue I hear, there was a process here. And Your Honor's well aware of it in the record, in which this program was vetted in at least two ways. First, it was vetted with the plan investors who were putting equity in the company and then making all the changes they chose to make and then concluding that it was in the best interest of the company to go forward with this program and that -- and at the comp committee, Mr. Naylor testified to this, that was viewed as a second opinion by the comp committee. They did take that into account. Also into account, and again on the creditor's committee review of this they negotiated for specific rights under Section 7.8 of the plan. They had their own independent compensation consultant; they evaluated the plan and they reached agreements with the company in which the creditor's committee concluded that the debtors' had complied with Section 7.8 plan of the plan and settled with the company. And that included, even in the cash portion of this, the company adopting the creditor's committee suggestion that the cash awards be spread out over two years. So there was a retentive nature to this even beyond the Chapter 11 case. That half the awards would not be paid until 2009 and would also be appropriate.

In connection with Mr. Miller and Mr. O'Neal, I think Your Honor has the math right. The eight million that Mr. Kennedy says that they would have no problem with having this group paid for, when added to the 7.3 million dollars worth of undisputed waivers in the record that occurred during the case by these two individuals, you get 15.3 million. And the total that's being suggested for them is something under that by a couple of million dollars. I know money's fungible but this is not a case where people are trying to get more than what had been contemplated. They, in fact, were getting less. And I -- we don't need to put up on the board, but the reality is Mr. Miller testified in his declaration -- I think it was in footnote 2 of his declaration -- testified to the fact that when he made -- gave this waiver, he was relying at the end of the day that the compensation at the end of the case would make a reasonable and fair determination of what he should be paid. That's what he relied on. Not on any individual element of compensation but rather he relied that he would be treated appropriately and fairly at the end of the case by the compensation committee who acted, I think, on a report that is not disputed in terms of evidence in the record.

There's also, I think, in Mr. DeChiara's discourse with the Court, some confusion about whether something is above market or above median. Mr. Naylor's testimony was that the compensation committee's efforts was to drive the total direct

compensation of executives to median, to market median. But it was total direct compensation, it wasn't every individual element had to be exactly median. And even with respect to total direct compensation, the testimony was that they want to make sure there was not material variances in that and there were percentages banded about as to what that might be. There was, and all the records shows and all the compensation stuff shows, it was acknowledgement that the DSB elements, salary elements, cash base salary element to this had been above a median, not above market. It's still within the range, that's the point here. I don't want to make sure the record's unclear about what's above median and above market. And Mr. DeChiara said above -- it was above market. That's not what the record supports. It was above median and the comp committee took action to move that in the general direction towards median by making permanent the voluntary waivers that had been in place during the course of the case.

There was discussion on the -- on the peer group issue and the survey issue and whether it was appropriate to use predictive data versus actual data for the bottom ten people in the DSB. This is -- this issue, which the court explored at some time in cross-examination affects ten out of 560 executives. And there was a decision closed to the parties, disclosed to the plan investors, disclosed to the creditor's committee, there was a decision by the comp

committee after consultation with its expert to use -- and extrapolate actual data as opposed to using predictive data which ultimately they determined and their judgment did not make sense to them. And that was the judgment that was -- actually, we're not backing away from that judgment, the company believes that was the right result as to those particular cases. It's not systemic as Mr. Kennedy suggests, it was a determination about ten slots in the lower part of the DSB and the testimony was that the survey data here didn't even cover some of the positions. When I went back and redirect and asked about survey data's to certain positions, the testimony was even the survey data did not cover those positions.

With respect to a couple of Mr. Kennedy's comments, I would just indicate -- again, there was at one point in the cross-examination, there was a proxy statement tossed up that had a 6.5 percent number in it and I think, if Your Honor examines that exhibit, what that reflected was the 6.5 percent addition to a pool that was being put in that particular year. In fact, reality is the actual dilution in the total pool was something on the order of eighteen percent and that was in addition; I think if one went back and actually read the words of that proxy statement.

The -- with respect to the SERP issues, the fact of the matter is the record here, I think, is now clear that the SERP as to retirees is being cancelled and terminated and

they'll have claims in the Chapter 11 case. With respect to go forward executives, it is being -- it is being frozen and then replaced and there are enhancements that are being put in connection with the frozen plan that had been disclosed. Again, to benchmark to what was be viewed as a competitive benefit and that information which again is uncontroverted in terms of it being competitive, the measurements were all in the final report that we went over at the time.

The -- and then the other thing, I don't believe the Dana opinions, which I've read, I don't think go to emergence programs and to the post emergence structure of management compensation to suggest that as a matter of law in this district or in this circuit, that there is -- or even in the court of the judge who wrote that opinion, that there is the only peer group that could be looked at is a peer group in the very same industry. I just don't think that's a -- their reading of that opinion and I don't think that's what -- how peer group analysis is done in evaluating management compensation. I recognize any connection with elements of compensation that are paid under 363 during a process, a Chapter 11 process, that often times people will look more closely and focus on Chapter 11 comparables and occasionally industry comparables but the clear, I think, accepted process in the management compensation business is to look at broad-based peer groups and I think that's the testimony in

this record.

And the last point I simply, Your Honor, would like to make as we -- in response to these items, is I do think that Mr. Kennedy had actually commented in his opening remarks that the IUE is very familiar with management comp, is very familiar with the elements of management comp and has -- and had no issues with how the -- with management getting all of those elements so long that there was fundamental fairness at a market median. Well, the evidence when you take the total of our compensation as a whole, the evidence here is that is added actually slightly below market median. That's the undisputed evidence. And while people want to beat up on individual elements of this, the overall conclusion I think from the evidentiary record can't be disputed. And the question really on, and probably the question of the day, really probably focuses on the cash emergence program where the debtors attempted to use a delivery vehicle in the Chapter 11 case that would provide the LTC, the long-term part of the pie to their management team on the same way that my view, and Mr. Kennedy even acknowledged, they were entitled to all of the elements of the pie, the question is the fundamental clearance of how to deliver them. We did not believe and we do not believe as a debtor that it's fair under any method to ignore it and simply eliminate it. And so the question is what vehicle to use? The record, in this case, indicates the company even pre-petition

migrated from a stock based system to a delivery vehicles to primarily cash in 2005 using seventy percent of the value was delivered in cash and proposed a program here that would -- where a hundred percent was delivered in cash and essentially placed it -- the opportunity here for this to be evaluated at the end of the case, backward looking with the court being able to decide whether there has been performance by the executives in a backward looking kind of way. And ultimately if Your Honor concludes that the program provides a benefit which hardly compensates or makes up for what was given up but in fact is discounted two-thirds as the record sort of -- as the record indicates. And as to Mr. DeChiara's equivalence of sacrifice arguments and some of my other comments I would simply go back to the arguments I made earlier, Your Honor, where I went through half a dozen particular items that had been -- that had been negotiated down. Much of which are just kind of Mr. DeChiara because he believes that they were above market. But again, that goes back to the basic disagreement between the two of us as to how one evaluates that because applying those same standards, then the UAW -- the UAW sacrifices wouldn't be viewed as sacrifices. I don't know.

I'll just end on that and ask Your Honor to confirm the plan of reorganization and I do have other items but Your Honor made a point to me that you were comfortable with the balance of the record and therefore I won't go into those in

any detail.

THE COURT: Okay. All right. I'll be back at 2 just to give people a chance to stretch their legs. Let's continue at 2:00.

(Recess from 1:50 p.m. until 2:03 p.m.)

THE COURT: Please be seated. Okay. We're back on the record in In re Delphi Corporation. I have before me the debtors' request for confirmation of their first amended joint plan of reorganization as modified. And I'm going to address certain elements of the confirmation standards set forth in primarily Section 1129(a) of the Code but also two or three other sections of the Bankruptcy Code first. And then address second the limited objections by the UAW and the IUE to one aspect of the plan.

I address the first points notwithstanding the fact that at this point I believe there are no remaining objections to the plan except for the union objections as well as the one or two sentence objection by Mr. Hallovey (ph.) based on the same general view regarding the proposed management compensation plan aspect of this plan.

I do that because the Court has an independent obligation under 1129(a) to review and consider the factors set forth therein. And particularly in light of certain of the objections and features of the plan, I've done that. And having undertaken that analysis, I conclude that the plan

satisfies all of the aspects of Section 1129 with the exception of 1129(a)(4) which I'll deal with at the end of my remarks.

A number of the objections raised classification issues under Section 1122 of the Code and/or Section 1123(a)(4) which provides for the same treatment of each claim in each respective class unless the holder of a particular claim has agreed to a less favorable treatment. Based upon the voting on the plan, which with two exceptions was overwhelmingly in favor of confirmation of the plan, I find that the plan does, in fact, satisfy Sections 1122 and 1123(a)(4).

The plan classified all unsecured claims whether contractually subordinated or not against Delphi Corporation and the DAS group debtors in one class. However, the disclosure statement made it very clear in a number of sections in bold print that the Court would consider holders' votes carefully in evaluating whether the plan met the classification and treatment requirements of 1122 and 1123(a)(4). And the debtors, true to their word, tabulated the votes not only for the entire class of unsecured creditors but also by category of senior debt versus sub-debt and also on a debtor by debtor basis. And on a debtor by debtor basis and on a senior debt and junior debt basis, the plan was accepted with the exception of two debtors that would not have implicated any 1122 or 1123(a)(4) issues.

On that basis, I conclude that I do not have to

consider in any great detail, other than to observe that it appeared to me to be a credible valuation, Rothschild's conclusion that the senior debt would be paid in full under the plan because of the plan vote. The debtors could, under Section -- I'm sorry, under Bankruptcy Rule 3019, if they wished, modify the plan to set up different subclasses but given the vote there is no need to. And at best, their classification scheme and my ruling that it satisfies the requirements of the Bankruptcy Code and, in particular, Sections 1122 and 1123(a)(4) would be harmless error. That very point was made by the second circuit in Kane v. Johns-Manville Corporation, 843 F.2d 636 at 647, citing Bankruptcy Rule 9005.

I also note that given the affirmative plan vote, with the two exceptions, for relatively second tier debtors that I'll address in a moment, all of the objections with respect to the absolute priority rule and the application of 1129(b) are rendered moot since the senior class in each case waived its rights to assert absolute priority distribution. See again Kane v. Johns-Manville, 843 F.2d at 650 as well as In re Jersey City Medical Center, 817 F.2d 1055, 1062 (3rd Cir. 1987).

With regard to the two classes of unsecured creditors of debtors that did not accept the plan, I conclude that the plan can be confirmed as it is drafted. First, there is no

extant objection to confirmation by a creditor in those classes. Secondly, I accept the debtors' analysis in two respects that would permit distribution to the parent companies shareholders as well as the immediate shareholders of those debtors. First, this plan satisfies the new value exception to the absolute priority rule in that it provides for the satisfaction of a joint several claim that would exist against each of those debtors through financial undertakings and the distribution of assets at levels above them which would provide substantial new value to those entities and relieve them of their underfunded pension liability and the contingent liability that they had in respect of the potential termination of the pension plan.

Secondly, as I'll discuss in a little bit more detail later, a key element of this plan is the debtors' settlement with GM, which is a multi-faceted settlement involving issues that go both to claims arising from the spin-off of the debtors from GM as well as ongoing issues tied to the customer relationship between the debtors and GM.

The provision of value by GM to the debtors and vice versa under that settlement is quite complex. However, I believe that one element of the settlement, and a key element, without which the settlement would not have been achieved, is a release by all of the debtors of GM and related release by third parties including the debtors' shareholders of related

claims. The consideration in respect of those releases, to my mind, would not necessarily flow to these two second and third tier debtors but rather would flow above them including as far as to the shareholders of Delphi Corporation at least in reasonable relation to at least a substantial portion of what they're attaining under the plan.

So consequently, I believe that the plan, even though there is no objection to it being crammed down, could, if there had been an objection, or would be subject to cramdown on those descending classes.

The plan also contemplates a partial substantive consolidation by groups of debtor entities. The plan, I believe, or the issue of the propriety of substantive consolidation under the plan, is not, I believe as a matter of law, rendered moot by the overwhelming affirmative vote in favor of the plan. However, in my view, the fact of such a vote as well as the absence of any extant objection to the plan's proposed partial substantive consolidation is the primary factor that I should consider in connection with this particular proposed substantive consolidation. That was the analysis undertaken by the Court in In re Standard Brands Paint Company, 154 B.R. 563 and In re Creditors Service Corporation, 195 B.R. 680. The first case comes from the central district of California, 1993; the second from the southern district of Ohio, 1996.

I also note that based upon Mr. Eisenberg's declaration as well as his limited testimony in response to my questioning, I conclude that no particular creditor is harmed by substantive consolidation. And that also has been a substantial factor when Courts have considered the issue. See, for example, In re Winn-Dixie Stores, Inc., 356 B.R. 239 (Bankr. M.D. Fla. 2006); In re Gucci, 174 B.R. 401 (Bankr. S.D.N.Y. 1994); and In re Affiliated Foods Inc., 249 B.R. 770 (Bankr. W.D. Mo. 2000).

That's particularly the case here as it was in the Winn-Dixie Stores case because this plan, as I noted earlier, relies in large part upon the complicated settlement with GM which crosses the borders of the various debtor groups and which is, as I said earlier, is well supported by the record and in the best interest of the debtors' estate.

I questioned Mr. Eisenberg, the debtors' primary witness on substantive consolidation with respect to the two debtors who had a class that did not accept the plan. Again, there was no objection by any creditor of those debtors to substantive consolidation which goes a long way to, in my mind, establishing that substantive consolidation is appropriate as laid out in the debtors' disclosure statement. But in discussing those two debtors which are ACEC Manufacturing General Partnership and Delphi Electronics Holding LLC, Mr. Eisenberg went through the relevant section in Exhibit B to his

declaration, which appears at page 28, in which he discussed the factors in support of the substantive consolidation involving both of those two entities.

Let me take Delphi Electronics Holding first. It appears to me to be a true holding company with no scheduled assets or liabilities. Therefore, it would have such liabilities only to the extent that it would have joint and several liabilities across the board with the debtors. With such an entity, I don't see any evidence in the record that substantive consolidation would harm any party. And indeed, given the recovery of the creditors of that entity, it appears to me to be to their benefit.

A similar analysis would apply to ACEC Manufacturing General Partnership. It did have scheduled assets and liabilities based on my knowledge of the sale of its indirect primary asset during the case. However, its liabilities exceed the assets and consequently again, it appears to me that substantive consolidation under the plan would be of no detriment to its creditors given their treatment under the plan.

I've also considered the releases injunction and exculpation provisions of the plan in the confirmation order. In light of the standards set forth in In re Metromedia Fiber Network, Inc., 416 F.3d 136 (2nd Cir. 2005) as well as cases that have interpreted that decision. And I conclude again,

taking into account the fact that there are no extant objections to those provisions, that those releases exculpation provisions and related injunctive provisions are consistent with the standard set forth in Metromedia. Judge Gerber in In re Adelphia Communications Corporation, 368 B.R. 140, distinguished the types of persons and/or circumstances where releases may be appropriate. He noted that -- and this is at 268 -- that releases and related exculpation and injunctive provisions with regard to indemnified persons with regard to unique transactions where third parties are contributing substantial value, in particular, are appropriate grounds for a third party release in a plan. This disclosure statement, or the plan's disclosure statement, described at length the rationale for the releases in the plan and, in particular, the release being provided to GM. It's also clear to me that the releases related to the plan investors were also adequately disclosed and supportable under the logic of Metromedia and Adelphia.

Also with the appropriate caveats accepting willfulness conduct and the like, the other released parties would be entitled to their releases under the plan.

In particular, in regard to the GM settlement, I believe that District Judge McMahon's opinion in In re Karta Corporation, 342 B.R. 45 (S.D.N.Y. 2006) is appropriate given the key role that that settlement played in the debtors'

reorganization. But that in each case, given the consideration provided to the estate and the actual or anticipated consideration back in the form of release, it appears to me first that the released parties' interest are aligned in interest with the debtor; and secondly that the releases offered very reasonable relationship to the protection of the estate and go no further than necessary to protect those interests as Judge McMahon analyzed Metromedia in the Karta case.

In that regard, I also should observe that I've considered the relative strength of the claims that are being released -- of the claims of third parties that are being released, particularly, in light of where I know the case as well as case law in respect of third party claims related to the debtors' claims. And it appears to me that consistent with Judge Gerber's analysis in In re Global Crossing Ltd., 295 B.R. 726 (Bankr. S.D.N.Y. 2003), the nature of the claims being released by third parties is very much more than offset by the benefits that they are receiving under the plan.

Finally, I've considered the plan's mechanism for dealing with executory contracts and unexpired leases which originally raised or prompted or provoked a number of objections. As is often the case with an operating debtor that has a number of contractual relationships, many of those objections really were tied to simply trying to assure that the

nondebtor party to the contracts' cure claim and adequate assurance claims were appropriately addressed. But more than a handful of the objections raised the point that in the objectors' view, a debtor cannot obtain an order authorizing assumption or rejection of an executory contract or unexpired lease after confirmation of a plan. I believe this is too narrow a view under the case law and commentary. Rather, as long as the motion to assume or reject is pending prior to confirmation and the debtor is dealing with that motion in good faith, I believe that the debtor can obtain an order authorizing assumption or rejection after confirmation. And indeed, in light of the development of the facts over issues pertaining to cure and adequate assurance and the like is free to change its mind. See, for example, In re J.M. Fields, Inc., 26 B.R. 852 (Bankr. S.D.N.Y. 1983) and In re Gunter Hotel Associates, 96 B.R. 696 (Bankr. W.D. Tex. 1988) as well as the relevant discussion in Collier on Bankruptcy at paragraph 365.04.

I've reviewed the confirmation order that has been proposed by the debtors having received a blacklined copy of it this morning, which the debtors provided, as they said they would, at the close of the proceedings on Friday. And I am prepared to make consequently all of the findings in it with the one exception that I addressed a moment ago dealing with the management compensation aspects of the plan which I want to

turn to now.

The standard by which the Court should consider the three objections to the plan that all relate to management compensation issues is an interesting question. The two unions rely upon Section 1129(a)(3) of the Code, which states that "The Court shall confirm a plan only if the plan has been proposed in good faith and not by any means forbidden by law." The unions contend that the management compensation provisions baked into the plan through Sections 7.8 and attached exhibits are fundamentally unfair and therefore violate Section 1129(a)(3). I believe this goes too far under the facts of this particular case based upon my review of an extensive record and two days of testimony. I believe that 1129(a)(3) primarily goes to the negotiation and proposal of a plan and that it is within that context or within that prism that the Court should consider its fundamental fairness. The cases relied upon by the objectors are consistent with that view. They did not look at the reasonableness of proposed management compensation or the fairness of proposed management compensation on a stand alone basis, but rather considered whether management issues tainted the negotiation and pursuit of confirmation of a plan which was, in fact, what the Court found in In re Bush Indus., Inc., 315 B.R. 292 (Bankr. W.D.N.Y. 2004) where Judge Buckeye concluded that managements focus almost exclusively on its own proposed compensation and

perquisites improperly tilted the negotiating process. In contrast, see In re Granite Broadcasting Corporation, 369 B.R. 120 at 137-138 (Bankr. S.D.N.Y. 2007), where the Court found, contrary to Bush Industries, that there was no 1129(a)(3) problem because the plan was negotiated independently of the senior managers' interest. And the plan funder and the managers agreed on provisions relating to management's employment terms following the formulation of the plan of reorganization. It was also noted, contrary to Bush Industries, that in that case, in Granite Broadcasting, management was going to play an important role going forward and consequently, it was totally consistent with fair process that those who would be owning the stock of the company on a going forward basis would, after negotiation of the plan of reorganization, negotiate management's employment terms.

This does not mean, however, that there isn't an applicable provision of 1129 for the union's objections. I believe that provision is Section 1129(a)(4). I believe this is the provision that the debtors view as being applicable. At least during oral argument, Mr. Butler stated that this is not an issue to be determined under Section 363(b) of the Code since it comes at the end of the case and is couched in a plan upon which there has been a disclosure statement and creditors have voted.

Section 1129(a)(4) states "Any payment, made or to be

made by the proponent, by the debtor or by a person issuing securities or acquiring property under the plan, for services over costs and expenses in or in connection with the case or in connection with the plan and incident to the case, has been approved by or is subject to the approval of the Court as reasonable." This provision has been applied not only to professionals but also to senior management and, in one case, employees of a trustee. See In re American Freight Systems Inc., 1998 U.S. App. LEXIS 7847 (10th Cir. April 23, 1998); In re Sherwood Square Associates, 107 B.R. 872 at 877, 878 (Bankr. D. Md. 1989); as well as In re AIOC, A-I-O-C, Corporation, 2000 Bankr. LEXIS 1360 (Bankr. S.D.N.Y. June 1, 2000).

That having been said, there are very few cases and none in any detail, that discuss how the Court should go about an 1129(a)(4) analysis. In one level, I believe that it is appropriate as with the substantive consolidation analysis, for the Court to take into account the affirmative vote in favor of the plan given that the elements of the management compensation plan were described at length in the disclosure statement and, secondly, obviously affect the recovery by all parties in interest who are receiving distributions under the plan, certainly in the form of stock, which is most of the parties receiving distribution under the plan.

On the other hand, I don't believe that the Court should be as deferential in this analysis as I would be, or as

I was, in connection with the substantive consolidation analysis. I say that because Section 1129(a)(4) sets forth its own standard as reasonable.

Secondly, I believe that Congress was concerned that in Chapter 11 cases there is a risk that payments for services rendered during the case or in connection with the plan and incident to the case might be improper or unreasonable and therefore put the burden on the Court to police the system to avoid the risk of those who would be voting on the plan from being unduly pressured to accept unreasonable payments going to third parties including not only professionals who'd be involved in the case but also to insiders.

I also believe that the Court's obligation to do its own analysis as to whether payments under Section 1129(a)(4) are reasonable is influenced by the case law and in particular, the second circuit case law with regard to administrative claims. The payments proposed under the management compensation plan are not in respect of administrative claims, obviously, although they are cash payments. And further, one element of the analysis of the reasonableness of those payments is to compare them to the rights of the recipients or the proposed recipients including their claims against the estate. And as the second circuit has said, and more recently the Supreme Court has said, because the presumption in bankruptcy cases is that the debtors' limited resources will be equally

distributed among his creditors, statutory priorities are narrowly construed. See In Re Bethlehem Steel Corporation, 479 F.3d 167, 172 (2nd Cir. 2007) as well as Howard Delivery Service, Inc. v. Zurich America Insurance Company, 126 Sup.Ct. 2105, 2116 (2006).

There's one other element to the analysis of the proposed management compensation program under the plan that goes beyond Section 1129(a)(4) that I also should note. It is unique to the UAW in the MOU agreed to between the UAW and the debtors. Delphi agreed to, in paragraph -- or Section I, "the principle of equivalence of sacrifice" when establishing compensation and benefit levels for salaried employees and management to ensure that sacrifices by UAW-represented employees are reflected in the pay and benefit practices of all non-represented employees."

There has been back and forth between the debtors and the UAW as to the meaning of this provision. I believe that it should be viewed, first, in terms of its plain words and second, in the context of analysis using the same context under Section 1113(b)(1)(a) of the Bankruptcy Code. I note first that obviously given that Delphi and the UAW entered into the MOU, the Court never entered an order under Section 1113 authorizing the rejection of the UAW Delphi collective bargaining agreement. Rather, the parties negotiated a resolution of that dispute. However, that dispute was clearly

a backdrop to those negotiations. And moreover, I believe that the Court's interpretation, again, of a similar concept in the 1113(b) concept -- I'm sorry, in the 1113(b) context is a reasonable interpretation of the concept of equivalence of sacrifice. Section 1113(b)(1)(a) states that the debtor satisfy the Court that "all creditors, the debtor and all affected parties are treated fairly and equitably in connection with a proposal to reject or modify a collective bargaining agreement. The purpose of this provision, according to the second circuit, is to spread the burden of saving the company to every constituency while ensuring that all sacrifice to a similar degree" -- see Truck Drivers Local 807 v. Carey Transportation, Inc., 816 F.2d 82. Continuing on in that case, the second circuit states "The debtor is not required to prove in all instances that managers and non-union employees will have their salaries and benefits cut to the same degree that union workers' benefits are to be reduced. To be sure, such a showing would assure the Court that these affected parties are being asked to shoulder a proportionate share of the burden. But we declined to hold that this showing must be made in every case. Rather, a debtor may rely on proof that managers and non-union employees are assuming increased responsibilities as a result of staff reductions without receiving commensurate salary increases. This is surely a sacrifice for these individuals, particularly where, as here, the Court finds that

only the employees covered by the pertinent bargaining agreements are receiving pay and benefits above industry standards, it is not unfair or inequitable to exempt the other employees from pay and benefit reductions.

A similar point was made by Judge Gropper in In re Northwest Airlines Corporation, 346 B.R. 307 (Bankr. S.D.N.Y. 2006) when he discussed the same requirements. He stated, again, quoting Kerry Transportation and Century Brass, "the purpose of the fair and equitable requirement is to 'spread the burden' of saving the company to every constituency while ensuring that all sacrifice to a similar degree." He noted, however, it is not necessary for all affected parties to receive identical modifications. And concessions asked of various labor groups may reflect differences in the groups' wage and benefit levels. Further, he states, "because it is often difficult to compare the differing sacrifices of parties in interest, Courts supply a flexible approach in determining what constitutes fair and equitable treatment." He cited cases for those propositions in In re Allied Delivery System Company, 49 B.R. 700 (Bankr. N.D. Oh. 1985). "The Court did not look for dollar for dollar proportionality but rather looked at the merits of each party's legal position as well as the nature of the concessions that were being asked of various labor groups including whether parties, as in the Kerry case, were above market to begin with or not. In the In re Indiana Grocery

Company, Inc. case, 136 B.R. 82 (Bankr. S.D. Ind. 1990), which Judge Gropper cites for its -- "equity under Section 1113 means fairness under the circumstances, the Court found that there was no sacrifice by management or any evidence of increased duties or other give-ups in any way." In Northwest, Judge Gropper stated as for the sacrifices by non-union personnel, "the evidence is that management base pay was cut up to fifteen percent and cash compensation for officers was reduced by approximately twenty percent in December 2004. In December 2005, the debtors instituted additional pay and benefit cuts for management to achieve total payroll reductions of seventy-three million. During the bankruptcy, there has been no effort by these debtors to institute a Key Employee Retention Plan, or KERP, for top level officers."

So, in addition to considering whether the proposed management compensation plan under the plan is reasonable under Section 1129(a)(4), I have considered whether it comports with the equivalence of sacrifice provision in the UAW MOU as applied and interpreted by the foregoing cases.

In considering the reasonableness of the management compensation plan, I've done two things. First, I've considered it pursuant to its own goals which are set forth in numerous places, including the declarations of Mr. Bubnovich and Mr. Naylor. Secondly, I've reviewed it in light of factors most recently discussed by Judge Lifland in a somewhat

different context in In re Dana Corporation, 358 B.R. 567 (Bankr. S.D.N.Y. 2006) in which he considered a proposed out of the ordinary course management compensation program offered up under Section 363(b) of the Code during the case in its early stages. In Dana, he asked, noting numerous cases that have applied a similar logic, is there a reasonable relationship between the plan proposed and the results to be obtained? Is the cost of the plan reasonable in the context of the debtors' assets, liabilities and earning potential? Is the scope of the plan fair and reasonable? Does it apply to all employees? Does it discriminate unfairly? Is the plan or proposal consistent with industry standards? And what were the due diligence efforts of the debtor in investigating the need for a plan including analyzing which employees need to be incentivized? And again, what is generally applicable in a particular industry?

The plan is multi-faceted. It covers all four traditional aspects of management employees compensation, that is, base salary, short term incentives or bonuses, a long term incentive element as well as retirement benefits and other benefits. In addition, it has an element that is intended not to be forward looking, i.e., looking to the period after which the debtors emerge from Chapter 11, but rather, is intended to cover what the debtors was a lost or foregone compensation opportunity during the Chapter 11 cases. The debtors'

philosophy in respect of the compensation program cannot be faulted. It is to provide its senior managers, who in this case number approximately 560 individuals given the size of the debtors, with competitive market-based compensation in the aggregate. More specifically, the debtors have adopted a policy to attract, motivate and retain talented and dedicated management by providing competitive benchmark-based compensation at market for executives as determined by independent third parties. In addition, they want to link most of total direct compensation to performance-based incentives in the creation of long term shareholder value and have stock-based incentives as a core element requiring that the executives maintain a meaningful amount of stock during their tenure. Finally, they want to provide sufficient flexibility to the board to recognize and reward individual performance.

I am well aware of the merits of the last point. And I note generally that while bankruptcy courts must confront as I have during the course of the case proposals that are out of the ordinary course related to management compensation and also must do so under 1129(a)(4), I do not believe it's an appropriate role of the Court to micromanage that issue but rather to recognize that compensation programs and decisions are at the heart of the management process where an appropriate amount of flexibility needs to be maintained. Moreover, micromanagement, I think, would be inconsistent with the notion

of a debtor-in-possession which is at the heart of Chapter 11.

On the other hand, it is critical for the Court to review the fairness of the process of implementing the foregoing goals and if there are questions with regard to the fairness of that process, the reasonableness of the outcome.

The two unions have raised serious issues going to the reasonableness of the process of setting at least certain elements of the proposed management compensation program. Let me be careful, however, in explaining why I've reached that conclusion. I do not believe they have established that the compensation committee, and in particular, Mr. Naylor, is under or was operating under any debilitating bias or conflict. That simply was not established by the evidence before me. Nor do I believe that they have shown that the debtors' compensation consultant was under an improper bias or conflict simply from the fact that it performed other lucrative services for the debtor or could be dismissed by the debtor at will. In the fish bowl of Chapter 11, I believe that any attempt by the debtor to influence Watson Wyatt through either of those two avenues would explode in the debtors' face. Moreover, there's absolutely no evidence that the debtor or its management used any such leverage.

On the other hand, I believe that the particular individual managing the Watson Wyatt process, Mr. Bubnovich, did approach the process of advising the debtors' compensation

committee and ultimately the board from an improperly skewed perspective. I do accept the argument by the unions that Mr. Bubnovich, who very clearly maintained full control over the Watson Wyatt process, viewed himself less as a disinterested expert than as a advocate to achieve a result for management that all too often was such that he would not advise management, and more importantly, the compensation committee, of the weaknesses of his analysis but rather was looking down the road to a negotiation with other parties in interest, including, ultimately, the Court. I do not believe this to be the proper role of an expert. And particularly, it is not the proper role of a compensation expert who can only be credible in an environment like this when he or she remains disinterested.

Therefore, notwithstanding that the compensation committee was extremely active in considering the appropriate standards and criteria and ultimate calculation of each element of the proposed management compensation program meeting in excess of twenty times on the issue. I believe that I cannot rely upon a business judgment analysis here but need to look behind the facts -- I'm sorry -- behind the conclusions asserted by Mr. Bubnovich to the compensation committee and ultimately adopted by the debtors. I believe that's particularly appropriate with respect to the portion of the management compensation program that deals not with prospective

compensation but rather is intended to provide additional compensation to management for the Chapter 11 period. Frankly, there is some issue in my mind as to whether that is the only aspect of the program that is fully covered by Section 1129(a)(4) although I believe, as I'll say in a moment, that portions of the prospective compensation also take into account the foregone opportunities for long term incentive compensation during the case and therefore are also properly reviewable under 1129(a)(4).

The unions criticize almost every element of the proposed management compensation program. I, however, do not go so far. First, I believe that the evidence shows that the proposed reservation of stock in the form of stock options and restricted stock grants upon emergence is reasonable and consistent with market practices. Under the proposal, an aggregate of eight percent of reorganized common stock at an appropriate strike price is reserved for management three percent of which will be issued in the form of options and restricted stock on the effective date on a fifty/fifty basis and five percent of which will be issued subject to the determination of the new board in the future. The value of that stock clearly has increased substantially based upon comparison the debtors' current projections with projections at the commencement of the case. However, I believe that the appropriate measure of the reasonableness of this grant is not

the assumed value of it but rather the comparison of the percentage grant with grants by comparable companies both in and out of Chapter 11 or emerging from Chapter 11 and never having been in Chapter 11. The record clearly shows that this eight percent grant is substantially below what is customary under the circumstances. That fact is not offset by the fact that there is somewhat more restricted stock as compared to stock options being issued on the effective date. The value of the debtors and consequently of their stock on emergence is attributable to many parties, among others certainly, to the union workers and the concessions that they made as part of their negotiated revisions of their collective bargaining agreements. But I believe it is also attributable to the management group and the percentage amount accords them a reasonable amount of that value as part of a long term incentive opportunity post-emergence compared to the market place.

There was considerable dispute over the issue of whether the salaries of the management group are at market or above market as of the emergence date. That dispute hinged upon, among other things, the choice of comparable companies by which to evaluate salary as well as the data that Mr. Bubnovich chose to use and chose not to use coming from comparable companies.

I believe that, with two exceptions, the salary of

the covered employees here is within a reasonable market range. The exceptions pertain first to the so-called DSB group, that is, the most senior group of roughly twenty Delphi managers and Mr. O'Neal. With regard to Mr. O'Neal, I accept that given his position, his salary coming out of the Chapter 11 case would be first and foremost negotiated with the plan investors. And Mr. Naylor was candid that that's how the compensation committee viewed it as well. Consequently, the fact that his salary is higher than market data for competitors does not particularly bother me although I do believe it is relevant to issues with regard to his compensation for the period of the Chapter 11 case itself.

I am much more bothered by the distinct possibility that the salaries of the DSB group are substantially still above market. A portion of that group -- it's not clear whether it was ten or more -- took a ten percent salary reduction during the Chapter 11 cases to reflect what the compensation committee was told was an above-market compensation for those individuals, as did Mr. O'Neal take a twenty percent reduction.

It appears, however, from Mr. Bubnovich's testimony that this group may be even more above market given Mr. Bubnovich's refusal to consider and input relevant survey data for the DSB group. I also have some concern that Mr. Bubnovich has chosen a group of peer companies that may pay more

generally for executives than what may be the true peer group for the debtors' executives.

However, I believe that except with respect to the DSB group, the effect of the foregoing is relatively modest. Meaning that I believe that with the exception of the DSB group again, the debtors' executives covered by the proposed management compensation plan are in a competitive market range whereas, I believe, the DSB group may be materially above that range.

It's also been contended that before freezing and terminating the defined benefit plan SERP for executives, the debtors improperly or uncompetitively improved the plan. This is on top of, obviously, any continuation of the plan as a defined contribution plan going forward. That was done both by lowering the vesting age and by providing roughly eleven million of additional stock to account for the change from a DB SERP to a DC SERP going forward for certain executives. Again, while a vesting age of fifty-five, it appears to me, based on this record, is market, it is unusual to have made these changes as to the frozen plan, a benefit that I believe is above market and above customary practice.

So, in sum -- oh, let me address one final point which I do not believe the debtors have been criticized on per se which is that the management compensation as proposed contemplates the continuation of the short term incentive plan

that has been in existence during the course of the case. I have previously found after lengthy hearings that the criteria for that short term incentive plan were appropriate after vetting with the creditors' committee. There will be a similar vetting process here as long as the committee's around and then thereafter by the board. And I believe there's been no evidence submitted that that process is unreasonable or inappropriate.

And consequently, in sum, I conclude that those aspects of the proposed management compensation plan, all of which are primarily prospective looking, are slightly over market in ways that will cost the debtor substantial amount of money, in my view, over a hundred million dollars of value, potentially above market. But that they are nevertheless appropriate on a going forward basis. I say that notwithstanding the flaw in Mr. Bubnovich's approach based on my own review in light of the unions' criticism as well as in light of the review undertaken by the creditors' committee, the equity committee and the plan investor all under -- in the case of the creditors' committee and the plan investors, under Section 7.8 of the plan. And indeed, in a number of important respects, the committee's review, as well as the plan investors' review, produced the original package that was proposed.

Let me turn then to the aspect of the plan that I

believe is particularly problematic. And that is the aspect dealing with not post-emergence compensation but what is proper compensation for management during the Chapter 11 case. As I noted earlier, management received short term incentive compensation during the Chapter 11 case notwithstanding the vociferous objections of the unions. Management also received their salaries unabated with the exception of the ten percent and, in the case of Mr. O'Neal, twenty percent discount that I noted a moment ago. However, as I noted also, it appears to me that that discount, at least in respect of managers other than Mr. O'Neal, may well not have been enough to bring the managers' salaries to market levels.

What they did not receive during the course of the case was a long term incentive opportunity. Generally speaking, such opportunities come in the form of stock allotments as is the case here with respect to the eight percent allotted going forward post-emergence from Chapter 11. Those opportunities are just that. They're opportunities. They typical corporation does not make a gift of stock but provides stock options at a strike price that reflects a successful performance, at least by the company, before there is significant value to be obtained by the executive or -- or and/or in the form of a restricted stock grant that vests over a fairly lengthy period. Here, pre-petition, it was five years. Which also has an element of optionality in it since

the stock price can go down as well as up.

Distressed companies find inevitably that long term incentive compensation in the form of stock grants and stock option grants cannot be used as a practical matter. That is for two reasons. One, the stock is traditionally under water; and two, its existing pre-reorganization stock at the bottom of the priority chain. And the grant of more of it during the case is an improper dilution of those who are holding stock as well as generally a reflection of an analysis that properly takes place at the end of the case when the debtors' capital structure has been set in place by a plan.

In some instances -- in many instances in the past, debtors have tried to overcome this problem which obviously healthy companies don't have in keeping their work force happy by proposing key employee retention plans, plans that reward, in the form of generally cash, employees for staying on to work for the debtor. Such plans, as the unions have noted, have a cloudy reputation and are, as a practical matter, largely eliminated by Congress in the 2005 amendments to the Bankruptcy Code. This case is not governed by those amendments and so I have not reviewed these proposed cash payments on emergence in light of those amendments. That is, the debtor was free, if it chose, to file a KERP plan to provide for payments to keep its managers working during the course of a Chapter 11 case. It didn't do that at least in name. Instead, the debtors filed a

motion for approval of a so-called KECP, K-E-C-P, which included both a short term incentive plan, which the Court subsequently approved, as well as a surrogate or a proposed surrogate for a long term stock incentive opportunity. The Court never heard that aspect of the motion. It was continually deferred at the request of the creditors' committee and with some pressure from the Court.

The debtors contend based upon Mr. Bubnovich's comparable company data that, for their senior executives, roughly sixty percent of their compensation is attributable to a long term incentive opportunity for the more junior executives a smaller percentage as set forth in the pie charts attached to Watson Wyatt's presentation, which is an exhibit to Mr. Bubnovich's declaration. Therefore, they tried to place a value on that opportunity and provide some comparable equivalent to it in the proposed long term incentive compensation for the Chapter 11 period. They did so by valuing the opportunity at its face at 110 million dollars, discounting it by twenty percent and then providing that that amount would be paid in cash at the conclusion of the Chapter 11 case whenever that would be. Obviously, as time progressed, that present value discount became substantial. The eighty percent figure was roughly eighty-seven million dollars. On an annualized basis, the amount would be approximately thirty-four million dollars.

The question raised by the unions and, frankly, by me is whether that analytical process bears any relation to reality. Mr. Bubnovich was candid in saying that the approach was "a novel one". He had not seen it before in his lengthy experience in Chapter 11 cases. To the contrary, he testified that as far as emergence cash bonus awards were concerned, such rewards were rare or not the norm in Chapter 11 cases and in far lower amounts. This is corroborated by the fact that he applied a different analysis looking at Chapter 11 cases and data only when considering the propriety of a proposed cash emergence award for the two most senior executives of the debtors, Mr. Miller and Mr. O'Neal.

The issue raised by the debtors' request raises a number of sub-issues, one of which I can deal with fairly easily. The debtors, as I said, made their motion for approval of the KECP early in the Chapter 11 case. They also advised their managers, including new hires, that they would seek such cash emergence awards at the end of the case. The question then is what sort of reliance, if at all, did the managers place on the filing of the KECP and also such statements by the debtors. The statements that I've reviewed in the record were couched carefully in stating that ultimately the Court would have to consider and approve such compensation and that there's no assurance that the Court would do so. The debtors also have stated candidly that they are not couching their request based

upon reliance to parties' detriment by the managers.

A related issue is whether notwithstanding the novelty of the debtors' approach with regard to the proposed eighty-seven million dollars of cash emergence bonuses, the approach is still reasonable. In that regard, I considered why Mr. Bubnovich applied a twenty percent discount to the 110 million dollars and why he tied the program to one criteria which was emergence from Chapter 11. Frankly, he didn't really have an answer on either point other than it seemed right which, again, is of little to no help to a fact finder and discredits, in my view, the ability of the compensation committee and the board and ultimately the Court to rely upon his analysis. He was also, to put it charitably, confusing about why he applied a 110 million dollar base to start off the process, particularly, recognizing that the payment would be made at some date, in any event, since it's tied simply to emergence from Chapter 11 and would be made in cash as opposed to stock options, restricted stock and some form of performance-based cash award which he testified constituted a third of the long term incentive plan for the company in 2004 although he could not describe what the performance parameters were. Nor did his discounting and use of the 110 million dollar base, to my mind, take into account that in three of the five years of its existence pre-petition the debtor didn't, in fact, pay out anything in respect of long term incentive plan

payments through actual realizable stock.

On top of that, the debtors have not indicated in the record any comparable amount of cash emergence bonuses in comparable Chapter 11 cases. And apparently Watson Wyatt undertook no such analysis except in respect of the seniormost two managers where based upon the exhibit to Mr. Bubnovich's declaration, the proposal by the debtors on its face without one element that I'll discuss was at the high end.

The proposal as to the two most senior executives, Mr. Miller and Mr. O'Neal, proposed a 13.6 million dollar cash emergence bonus. This proposal, however, needs to be examined in the light of what was previously given up by those executives. In particular, Mr. Miller, during the course of the Chapter 11 case gave up approximately 6.7 million dollars of value that he would have otherwise been entitled to under the terms of his employment by agreeing to take, for the relevant period, only a dollar a year in compensation. I do not believe that it is reasonable by any means to hold Mr. Miller now that the case has been successful and that the company's reorganization goals have been realized to that dollar a year pledge. He took the risk indeed that the company would not successfully achieve its Chapter 11 goals and would have run the risk of taking less than what he had previously agreed to before the one dollar waiver. But having achieved those goals, I believe the proper measure of his compensation

for the Chapter 11 period should include the amount that he previously gave up.

With regard to Mr. O'Neal, he gave up roughly 500,000 dollars during the chapter case, but, unlike Mr. Miller, he is being employed on a going forward basis on an above market salary. And I believe that's important to keep in mind when evaluating his proposed cash emergence bonus.

But in any event, I have had to consider what, if anything, should be paid to the entire management group in respect of an emergence cash bonus. I do not believe the debtors have carried their burden to show that what they have proposed, an eighty-seven million dollar payment, including 73.4 million to those other than the top two executives is reasonable. And I believe it would be a true extension of Chapter 11 practice to authorize its payment.

There is some kernel of truth, however, to the debtors' contention that as far as their out of Chapter 11 competitors are concerned, they have been undercompensating their management on the long term incentive plan aspect of compensation during the Chapter 11 case. It is also true that this case has been, on an operational level, I believe one that would merit an award to executives, not just the top two but any of the executives who, in the determination of the board and the compensation committee in light of the particular demands of the debtors being in Chapter 11, performed in a way

to contribute to the achievements that the debtors have accomplished which are detailed in Mr. Miller's declaration.

That is, however, offset by two things: first, in my views as to certain groups of executives being compensated above market on a going forward basis, as I discussed previously and second, my belief that although the executives have given up certain rights to which they were entitled, just as the union gave up certain rights to which it was entitled or the unions. Those rights were generally given up because they were above market or for other reasons, such as the executives' desire to continue to be employed by the reorganized debtors and consequently, their willingness to give up their change in control rights.

Nevertheless, it seems to me that the area where equivalence of sacrifice in a bankruptcy context is most applicable is in the area of long term incentive during the Chapter 11 case when the traditional stock incentive, almost by definition, has to go by the boards. And I believe that it is incumbent on any proposal to propose some surrogate for such compensation to take into account the circumstances of Chapter 11 in a way beyond the way that this proposal does so.

Now I could simply say that the proposed compensation plan is deficient in the area of the performance-based -- I'm sorry -- the performance-based emergence cash bonus. But having been through the hearing and knowing the debtors' need

to emerge from Chapter 11 promptly, I believe I need to go further than that and explain why and in what respect it is deficient in terms of actual dollars.

I should note, finally, that we are talking about actual dollars here in a debtor that is seeking to raise exit financing and can use every dollar that it has, another reason to be skeptical with regard to the asserted reasonableness of the eighty-seven million dollar cash emergence bonus.

Taking into account all of the foregoing factors and looking at the proposed management compensation program as a whole both in light of what is reasonable in Chapter 11 cases as well as the debtors' agreement to adhere to the equivalence of sacrifice principle, I believe that the appropriate aggregate emergence bonus for the entire group included Mssrs. Miller and O'Neal is 16.5 million dollars. I believe further that the compensation committee, while maintaining the ability to be flexible, should take into account the evidence deduced at this hearing as far as awarding such bonuses including, for example, whether an individual who is being compensated substantially above market should get a bonus, and secondly, to take into account the fact that I believe such bonuses are generally awarded for services in connection with the Chapter 11 case and in general responding to problems and issues created by the debtor being in Chapter 11. That may include every executive on the list but I believe that's something that

the compensation committee should have the flexibility to decide. By no means do I believe that this dollar amount should go to the seniormost executives exclusively, or even almost exclusively, but rather it's an amount to reward exemplary service across the board which I believe occurred here across the board given the achievements that are detailed in the record and that I take judicial notice of.

So, I am prepared to enter the confirmation order provided that the management compensation plan is changed in that one respect. I recognize that the issue of executive compensation is in some respects a lightening rod; it's clearly a sensitive issue not only for the executives but also for the union employees. I have tried to look at the issue, however, objectively and not to let in any notions of emotionalism. And I believe that that's the proper way to review it on all sides now, the unions as well as the debtors given the requirements that Congress imposed under the Bankruptcy Code.

MR. BUTLER: Thank you, Your Honor. With respect to that, we'll confirm with the company and stakeholders and look at the modification that you're requiring.

THE COURT: Okay.

MR. BUTLER: We have several other matters on the confirmation agenda and dealing with the rights offering and dealing with the MDL approval which we did bring before Your Honor.

THE COURT: Right.

MR. BUTLER: And on an unrelated topic to the matter you just ruled on, we'd also -- I think the plan investors and General Motors and the statutory committees would like to have a very brief chambers conference on an unrelated topic.

THE COURT: Okay.

MR. BUTLER: So I just -- in terms of timing, do you want to try to complete the rest of the work today?

THE COURT: I'd like to, yeah.

MR. BUTLER: Okay. Do you want to take a break and give you lunch --

THE COURT: Well, how long do you think the chambers conference is going to be?

MR. BUTLER: Probably I would assume under ten minutes.

THE COURT: All right.

MR. BUTLER: And the --

THE COURT: Do you want to do that before the MDL or --

MR. BUTLER: It's unrelated to the MDL; it's unrelated to the matters that are contested here.

THE COURT: I know that there are people here on the MDL and that -- maybe I'd like to get that out of the way, if we can.

MR. BUTLER: Okay.

THE COURT: And then I'm happy to have a chambers conference with you all.

MR. BUTLER: Okay. Would it be possible to take a five minute break before we keep going? Just to --

THE COURT: Well, we have everyone here.

MR. BUTLER: Okay. I'm happy to present it, Your Honor.

MR. DECHIARA: Your Honor, those of us at this table heard different things when Your Honor said the dollar amount that you believed should be the aggregate cash emergence.

THE COURT: 16.5 million.

MR. DECHIARA: If you could just say that again, please?

THE COURT: 16.5 million.

MR. DECHIARA: Thank you.

THE COURT: Okay. Sixteen --

MR. KENNEDY: 1-6.

THE COURT: 1-6.

MS. CECCOTTI: Point 5.

MR. KENNEDY: And, Your Honor, just to clarify one point. It wasn't clear in my own mind. Is that inclusive of the award --

THE COURT: Yes.

MR. KENNEDY: -- that's been given to Mr. Miller?

THE COURT: Yes.

MR. KENNEDY: All right. Thank you.

THE COURT: But again, it's an aggregate. The board can allocate that how it wishes.

MR. SPEAKER: Jack, are there other parties that will want to sit here?

MR. BUTLER: I don't know. I think --

THE COURT: I don't think so.

MR. BUTLER: Your Honor, the next matter on the agenda then, on the confirmation agenda, is the item involving the approval of the Multidistrict Litigation and Insurance settlement at Docket number 9296. There was one objection -- actually, it was four objections, I believe, in total that were filed by individuals represented by -- individual bondholders represented by the Goodwin Procter firm. At the settlement with the bondholders on the first day of the confirmation hearing, all of those objections were withdrawn. So insofar as the debtors' are aware, the MDL settlement -- or the MDL motion is now unopposed. The one thing that we had talked about earlier in connection with this and I think it was the point that the lead plaintiffs made, was a request that Your Honor, in terms of order -- entry of orders consider entry of this order prior to the entry of the confirmation order if Your Honor is prepared to grant this relief.

Your Honor may recall that in October of 2007, the debtors, after consulting with the creditors' committee, the

securities lead plaintiff and the ERISA named plaintiffs, determined to proceed with the motion under a two-step bifurcated approach. Under that step, we sought from this Court an order preliminarily approving the settlement granting certain relief, such as solicitation, voting and lifting the automatic stay with respect to certain documents produced to the securities lead plaintiffs. The Court granted that order and it was docketed at Docket number 10746 on October 29th of 2007.

Today's hearing, which at the preliminary hearing it was determined by the Court and it's what the debtors sought, that the second part of the bifurcated hearing would take place essentially in a companion manner to the confirmation hearing but independently of the confirmation hearing because the motion had been sought separately. We are now preceding with the second step of that hearing and asking Your Honor to give final approval of the settlement in connection with confirmation of the debtors' First Amended Joint Plan. Under the order that was entered at the point of the bifurcated hearing back in October, there were certain parties that had the right to file objections thereafter. That included the creditors' committee, the United States Department of Labor, Wilmington Trust Company as indenture trustee, the ad hoc committee of trade creditors, what I refer to as the ad hoc committee of bondholders or the Goodwin Procter group and the

equity committee. The order that was entered back in October barred all the parties from objecting to final approval of the settlement and no other party other than the ad hoc bondholders' committee filed an objection to this motion.

Your Honor, I would also point out in considering this matter, the MDL settlement was described in detail in the plan of reorganization. And there was, at Your Honor's direction, in fact, language inserted into the disclosure statement indicating that the Court would pay attention to -- in considering this matter, would pay attention to the manner in which classes vote both on an aggregate basis and as to various subclasses and groups there. And we had been through, and I would simply ask to be entered into this record, the prior the exhibits dealing with -- Your Honor -- in fact, Your Honor take judicial notice of the entire confirmation record.

THE COURT: That's fine. And in particular, the voting tabulations.

MR. BUTLER: Yes, Your Honor.

THE COURT: Okay. I'll do that.

MR. BUTLER: Which indicate that over 80.1 -- eighty-one percent of the ballots voted in favor and has the record Your Honor is familiar with as it relates to all of the various elements. Only Class 6(c) as a consolidated class, that group -- that class voted against the plan. There was one other, the ASEC (ph.) debtors on a deconsolidated basis, the

ASEC debtors also voted against the plan.

Your Honor, one of the things that is important here is that as part of this, we're asking Your Honor to consider the various releases and consider the various terms and provisions of the comprehensive settlement. This matter has been approved on a final basis by the district court. I think Your Honor is aware that there was a modification process through the district court that was reflective of a reduction in consideration in the class here with respect to the lead securities plaintiffs. Under the plan there was a reduction in the amount, I think, down to 179 million from 204 million, if I recall. And there was consideration that was to be paid to the debtors from a third party which was directed instead to the settlement funds, the escrow funds maintained by the district court. All that was disclosed in the district court litigation and we have filed, I believe, as an exhibit here -- to the confirmation record, we have filed the final stipulation to the modifications entered and approved by the district court.

Your Honor, in terms of reviewing this matter which Bankruptcy Rule 9019 and the various cases relied on in this Court for evaluating 9019 would be developed, we did file a response to the bondholder objection. It does state the company's positions. It states the law. In the absence of objection, while I'm perfectly prepared to argue this, in the absence of objection, I think I'd like to, with that

introduction, rely on the record that's now been incorporated here and in our papers.

THE COURT: Okay. Now the confirmation order had a couple of changes in it that related to the MDL settlement. Is that something that you all have agreed on?

MR. BUTLER: Your Honor, there are some additional -- I mean, I think there are some additional comments, just to say it on the confirmation order. We're still processing some additional comments to that order --

THE COURT: Okay.

MR. BUTLER: -- so I'm not sure it's -- I mean, I don't think the findings are going to change.

THE COURT: All right.

MR. BUTLER: But we're trying to resolve any differences we have with people although there aren't any -- I think Your Honor's ruled on the actual objections. But I would propose that just so that we can deal with it appropriately that we would submit the final MDL order along with the confirmation order probably tomorrow morning. I don't think it's going to get done before the day is up.

THE COURT: Okay. And my intention would be to enter the MDL order first --

MR. BUTLER: Yes, Your Honor.

THE COURT: -- since that's what was contemplated.

MR. BUTLER: Right. The --

MR. BROUDE: The order should be entered first. The one thing that we're working out with the debtor -- I think we all agree on is that if for some reason the confirmation order ends up being revoked, likewise the MDL order gets revoked.

THE COURT: I think that -- well, that's certainly in here already.

MR. BUTLER: Yeah. I mean, that's clear.

THE COURT: That's very clear.

MR. BUTLER: I mean, I've said it on the record.

THE COURT: And that's why this is done as part of a plan.

MR. BUTLER: Exactly, Your Honor.

THE COURT: Or part of this plan of confirmation.

MR. BUTLER: Right. That is correct. This will -- we need to go effective here for this to be final in this court under the plan.

I would also -- so, Your Honor, I don't have anything more on this matter unless -- Mr. Etkin --

MR. ETKIN: I have nothing to add in terms of argument, Your Honor. We're prepared to rely on the record and the pleadings that have been filed.

It's our understanding at least that we do have a final form, a final approval order that the parties are comfortable with and that we're prepared to submit to the Court. So I don't know whether Mr. Butler was alluding to

anything -- changes to that --

MR. BUTLER: Only that the creditors' committee have submitted some additional suggested comments last evening which we need to review with you and sort out whether there will be any changes before we submit it to the Court.

MR. ETKIN: Okay. Well, I'm --

MR. BUTLER: Either we'll submit it and the creditors' committee will submit a letter or they won't, but I wanted to give the three of us the opportunity to talk about it.

MR. ETKIN: Okay. Well --

THE COURT: But the form of confirmation order that I got this morning, the blackline, you've seen, right?

MR. ETKIN: I've seen that, Your Honor, and there's one little tweak that was agreed to. I think it was just a glitch in the blackline.

THE COURT: All right.

MR. ETKIN: But I don't think it's anything --

MR. BUTLER: That's why I wanted --

THE COURT: All right. If it's a glitch, that's fine. All right. I obviously reviewed this settlement once before. It was subsequently revised and I've reviewed it again. I originally reviewed it in the context of the bondholder objections. I believe that, first, the settlement was negotiated on an arms length basis. It was the result of a

mediation ordered by the district court in Michigan. The vote on the plan, in my view, has removed the one issue that existed, which is the absolute priority issue and following very full disclosure in the disclosure statement, I believe the vote was on a fully informed basis and consequently, the classes voting in favor of the plan have waived the applicability of Section 510(b). I think they did so because the disclosure statement set forth appropriately the rationale for the settlement. And I conclude, as did the debtors, that the settlement is in the best interest of the estate and fair and equitable. Obviously, the vote dealt with any issues that might have otherwise been in place because of the Iridium case. And consequently, subject to all the terms and conditions of the settlement, I'll approve it.

MR. ETKIN: Thank you, Your Honor.

MR. BUTLER: Your Honor, the next matter on the agenda is the rights offering estimation motion at Docket number 11606 pursuant to which the debtors seek the entry of an order under Sections 105(a) and 502(c) of the Bankruptcy Code estimating certain unreconciled claims for purposes of a discount rights offering.

Your Honor, there were sixty-four responses filed to the motion. They were summarized in the exhibits to the debtors' reply. I'm not going to try and reiterate them now, particularly seeing as all but one objection, I believe, as I

look through and just verify where we are -- I believe all but one objection was resolved or withdrawn. And the single objection that is pending is the objection of David N. Goldsweig, G-O-L-D-S-W-E-I-G, at Docket number 11854. That objection is pending but Mr. Goldsweig had informed us that while he was not going to withdraw it, he did not intend to prosecute his objection.

THE COURT: Okay.

MR. BUTLER: Understood that we were going to say that on the record.

For the most part, Your Honor, these sixty-four responses involved adjustments of one kind or another and to the estimated amounts that were negotiated between the parties. There are three settlements that involve more than a participation and amount of adjustment and I want to briefly summarize them to you. The first is a settlement with Robert Bosch GmbH and Robert Bosch LLC at Docket number 11879. And in that settlement, there was an agreement that Bosch could liquidate its discount rights and pay the proceeds that are to go into an account held by the debtors or third party escrow agent if requested by Bosch. Upon the liquidation of their claim, the proceeds would be distributed to the parties in accordance with the order or agreement resolving Bosch's claims. We still have -- the debtors would still retain the rights to recover any excess discount rights but it would be

limited to the amount of funds available in that account, that third party account.

With respect to Comerica, Comerica filed an objection. I believe this is at -- there are a couple of objections there. I believe this is for the objection at 11793 and 11858. And this dispute involved the debtors' agreement to purchase equipment leased to the debtors by Comerica. The lease expired pre-petition. The debtors and Comerica are working on how to value the purchase of the equipment since that time. We've remained in possession of the equipment. We affirmed our agreement in principle to purchase the agreement and to pay cash for that purchase, net of amounts already paid. And we've worked out a valuation process or we're working through a valuation process. General Motors has affirmed its guaranty under the lease and therefore Comerica has agreed on this record that it's not entitled to participate in the discount rights offering and we have removed their claim from the order.

THE COURT: Okay.

MR. BUTLER: The third, the last party that we needed to deal with, is General Electric Capital Corporation. And we agreed to two matters there. There was an agreement to the participation amount and there was an agreement that the debtors agree not to reject GE's existing commercial leases under Section 365 and waive any rights to do so under the plan

or otherwise. And the concern from them was just how they would be affected under the discount rights offering. But we reached an agreement. We got a concession from GE and that is that they agree to cap their cure claim amount under Section 365 for all purposes for pre-petition amounts to $651,626.18. There's no waiver by either party about what might happen with respect to administrative claims. But for purposes of the debtors evaluating the settlement, we're able to evaluate it based on a sum certain and we were prepared to proceed with the settlement on that basis.

THE COURT: So as far as the discount rights are concerned, if you haven't worked out their claim by the time of the discount rights date, they will --

MR. BUTLER: No. They essentially --

THE COURT:

MR. BUTLER: comply with the order like everyone else?

MR. BUTLER: Yeah, but they essentially can't participate now -- they won't participate in this now but they have a cure -- 'cause they're going the cure claim route.

THE COURT: Oh, okay.

MR. BUTLER: And they're going to the cure claim route. They wanted certainty that we wouldn't say it was zero.

THE COURT: Okay.

MR. BUTLER: We agreed on a cap and they -- therefore

they would not participate in this.

THE COURT: Okay.

MR. BUTLER: -- and they understand the various -- the people have been able to evaluate the risks.

Your Honor, in terms of having resolved -- with those three specific settlements, having resolved sixty of the matters -- responses as outlined on the response we filed and with Mr. Goldsweig not prosecuting his objection in these three settlements, unless Your Honor wants additional testimony with respect this matter, or argument, I think the purposes of the motion were clear and the papers were clear.

THE COURT: I just had one question. If it turns out that there were -- that the claim was less -- if there's an adjustment to be made, you had two options.

MR. BUTLER: Right.

THE COURT: My question is do you do the first option unless it's not available and then go to the cash pay option? Is that how it's going to work?

MR. BUTLER: Our first option, and people can correct me if I'm wrong, but my recollection of the motion as we prepared it was the first option was to offset against the stock.

THE COURT: Right.

MR. BUTLER: And --

THE COURT: And is that -- is that what you would

do --

MR. BUTLER: Yes.

THE COURT: If you could do it, that's what you would do?

MR. BUTLER: That would be -- that's our first approach.

THE COURT: All right. It wasn't entirely clear to me but I think that's right. That's the way it should be done.

MR. BUTLER: Unless someone's throwing tomatoes at my back, Your Honor, I think that's --

THE COURT: No. They're nodding actually.

MR. BUTLER: -- the debtors will stick by that. So I think that, in fact, is the -- is, in fact --

THE COURT: Okay.

MR. BUTLER: -- the intention.

THE COURT: All right.

MR. BUTLER: It's our general intention to do that.

THE COURT: Okay. All right. Does anyone have anything to say on this motion? All right. You answered my one question about it. Clearly, the debtors needed to fix as best they can a process by which to know who gets how many registration rights. And I believe this was a fair and reasonable way to do it as evidenced, I think, by the fact that it brought out of the woodwork those parties who had questions about what they would be getting and the debtors' treatment

which have all been, I believe, resolved. So I'll grant the motion.

MR. BUTLER: Thank you, Your Honor. Your Honor, before we conclude the formal record in the confirmation hearing, there was one point that had been negotiated with an objector and General Motors. I believe Weil Gotshal, a representative from Weil Gotshal -- I don't know if it's Mr. Tanenbaum or someone else has an acknowledgment that they're supposed to make on the record with respect to revisions to paragraph 52 of the confirmation order.

MR. TANENBAUM: So acknowledged.

MR. BUTLER: My understanding is that there's a carve-out under paragraph 52 in favor of a regulatory agency and that we were supposed to obtain Mr. Tanenbaum's or someone from Weil's acknowledgment on the record that GM consents to the additional carve-out that was negotiated with that regulatory agency.

MR. TANENBAUM: Your Honor, we consent to the language that's in the order.

THE COURT: Okay. Very well.

MR. BUTLER: Can I have just one moment, Your Honor?

THE COURT: Yes.

MR. BUTLER: Your Honor, I believe that concludes the confirmation hearing record for purposes of this hearing. We will work on finalizing any remaining changes to both the MDL

order and the confirmation -- I think we submitted the rights offering order but as to the MDL order and the confirmation order -- and we'll plan to submit that, if not later today probably tomorrow at this point.

THE COURT: Okay. Very well. So who is it that wants to meet with me? You and the two committees?

MR. BUTLER: I think we'd like to have a very brief chambers conference involving representatives of General Motors, the plan investors, the two statutory committees and the debtors.

THE COURT: Okay. Well, why don't you come around then?

MR. BUTLER: Thank you.

THE COURT: Thank you.

(Whereupon these proceedings were concluded at 4:07 p.m.)

I N D E X

R U L I N G S

C E R T I F I C A T I O N

I Lisa Bar-Leib, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

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